

THE
CLASSICS OF INTERNATIONAL LAW

EDITED BY

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DE INDIS ET DE IVRE BELLI RELECTIONES

BEING PARTS OF

RELECTIONES THEOLOGICAE XII

BY FRANCISCUS DE VICTORIA

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- I. Introduction by Ernest Nys, and Translation (by John Pawley Bate) of the Introduction by Ernest Nys.
- II. A Translation of the Text, by John Pawley Bate.
- III. Revised Text, by Herbert Francis Wright, with Prefatory Remarks, List of Errata, and Index of Authors Cited.
- IV. A Photographic Reproduction of Simon's Edition of 1696.

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PREFACE.

The Carnegie Institution of Washington has undertaken the republication of the leading classics of International Law and the present volume, containing the sections *De Indis* and *De Jure Belli* extracted from Victoria's posthumous work entitled *Relectiones Theologicae*, and published for the first time in 1557, is edited with an introduction by the distinguished Belgian publicist, Professor Ernest Nys. The English translation of the introduction and of the text of Victoria have been made by Mr. John Pawley Bate.

Inasmuch as the various editions of Victoria's writings, including the portion of them dealing with international law, are faulty, it was thought advisable to prepare a revised and critical edition of the text of the two *Relectiones*. The work was entrusted to Dr. Herbert Francis Wright, Instructor in Latin in the Catholic University of America, whose edition of the sections entitled *De Indis* and *De Jure Belli* appears in the present volume.

The reasons for including Victoria's tractates are sufficiently set forth by Professor Nys in his introduction, and yet the general editor is unwilling to allow the volume to go to press without a tribute in passing to the broad-minded and generous-hearted Dominican, justly regarded as one of the founders of International Law, and whose two tractates here reproduced are, as Thucydides would say, a perpetual possession to the international lawyer. Victoria's claim as a founder of the Law of Nations must unfortunately be based upon these two readings taken down by a pupil and published after his death, without the professor's revision and in a very summary form. They are sufficient, however, to show that International Law is not a thing of our day and generation or of the Hague Conferences, nor indeed the creation of Grotius, but that the system is almost as old as the New World.

One reason for undertaking the reprinting of the classics of International Law is the difficulty of procuring the texts in convenient form for scientific study; the libraries in the United States have been searched with the result that few of the earlier works were to be found. Another reason is that some of the works selected for republication have never been translated into English. The American publicist is therefore at a disadvantage in consulting works of admitted authority, and when found they are, as it were, sealed books to all but trained Latinists. The specialist is thus forced to rely upon summary state-

ments and references to them to be found in treatises on International Law, or is driven to examine them in European libraries, often a difficult task, while the general reader is practically barred from the stores of knowledge locked up in earlier works on the Law of Nations. The same difficulty exists in Latin America, Japan, and in a lesser degree in many European countries.

Eminent publicists, European and American, who have been consulted as to the usefulness of the plan to republish the Classics, have endorsed the project and have pledged their personal cooperation. The works to be included in the series have not only been approved but suggested by them, so that the undertaking is international in scope, in selection, and in execution.

The underlying principle of selection has been to reissue those works which can be said to have contributed either to the origin or to the growth of International Law and the term classic has been used in the broad rather than in the narrow sense, so that no work will be omitted which can be said to have contributed to the origin or growth of the Law of Nations. The masterpieces of Grotius will naturally be the central point in the series, but the works of his leading predecessors and successors will likewise be included. The text of each author will be reproduced photographically, so as to lay the source before the reader without the mistakes which might creep into a newly printed text. In the case of the early authors the photographed text will be accompanied by a revised text whenever that course shall seem desirable. An Introduction will be prefixed to each work, giving the necessary biographical details and stating the importance of the text and its place in International Law; tables of errata will be added, and notes deemed necessary to clear up doubts and ambiguities or to correct mistakes in the text will be supplied. Variations in successive editions of the text published in the author's lifetime will be noted, but little or nothing in the nature of historical commentary will be furnished.

Each work will be accompanied by an English version made expressly for the series by a competent translator.

It is hoped that the series will enable general readers as well as specialists to trace International Law from its faint and unconscious beginnings to its present ample proportions and to forecast with some degree of certainty its future development into that law which Mirabeau tells us will one day rule the world.

JAMES BROWN SCOTT,
General Editor.

FRANCISCI DE VICTORIA
DE INDIS ET DE IVRE BELLI
RELECTIONES

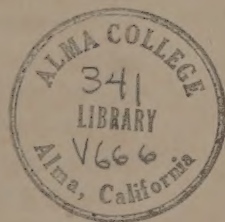
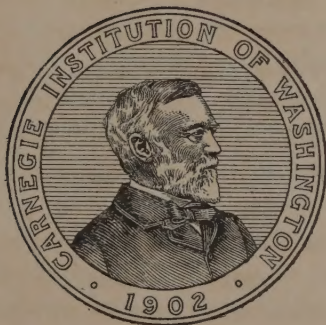
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INTRODUCTION.

PAR ERNEST NYS.

I.

Un des maîtres de la philosophie de l'histoire, Robert Flint, fait la remarque que c'est à une date relativement tardive qu'une science se sépare définitivement des champs contigus de la connaissance pour assumer une forme indépendante. Le droit des gens s'est constitué de cette manière au commencement du XVII^{ème} siècle en domaine autonome, si l'on peut s'exprimer ainsi. Comme le dit Flint, l'homme de génie que l'on appelle le fondateur d'une science ne fait que rattacher les éléments déjà existants; il se borne à réunir ses membres épars, à leur insuffler le souffle de la vie. Tel a été le rôle de Hugo Grotius et telle a été l'action exercée par son traité, *De jure belli ac pacis*, paru à Paris en 1625. Le célèbre écrivain avait eu des précurseurs, mais à parler exactement aucun d'eux n'avait envisagé l'ensemble de la matière; se confinant dans des parties distinctes, ils avaient étudié plus spécialement les uns le droit de la guerre, les autres le droit d'ambassade, quelques-uns—rares il est vrai—s'étaient adonnés à l'examen de certaines questions de droit maritime en temps de guerre. D'ailleurs, les théologiens, les canonistes et les civilistes, en plus d'un passage de leurs volumineux écrits avaient exprimé leur opinion sur la justice de la guerre, sur la capture de la propriété ennemie, sur le sort des prisonniers de guerre, sur quelques autres problèmes qui surgissaient dans les rapports des communautés politiques. Il ne faut pas oublier, en effet, que le génie européen s'est manifesté dès le onzième ou le douzième siècle de notre ère dans la forme d'une association de républiques, de principautés et de royaumes, qui a été le début de la société des nations. Sans doute, des éléments avaient été empruntés à l'antiquité grecque et romaine, aux institutions byzantines, à ces sultanats arabo-berbères qui s'étaient établis le long des côtes septentrionales d'Afrique, aux royaumes maures d'Espagne, mais des sentiments nouveaux s'étaient manifestés et faisaient naître des aspirations vers la liberté politique. Les membres de cette association étaient unis par des liens religieux: ils avaient la même croyance; ils n'étaient pas trop séparés par la langue et dans

tous les cas, le latin, langue de l'Eglise, leur servait utilement; ils admettaient une certaine égalité ou du moins aucun d'eux ne prétendait avoir la mission de dominer et de régir les autres. Une appellation s'était introduite qui donnait une expression à ces diverses nuances: c'était la *Respublica christiana*, la *Res christiana*. Sans doute, dans la théorie, les civilistes attribuaient aux chefs élus du Saint Empire les droits et les privilèges que les jurisconsultes classiques avaient reconnus aux empereurs romains; mais c'étaient autant de phrases pompeuses, qui n'avaient, en réalité, aucune grave conséquence, et qui, même comme expression grandiloquente d'une théorie, ne dépassèrent pas la première moitié du XV^{ème} siècle. A partir des dernières années du XIV^{ème} siècle, les rois de France affirmaient leur complète autonomie. En Angleterre toute sujétion envers l'Empire était déniée. Edouard II, roi d'Angleterre, avait déclaré: "*Regnum Angliae ab omni subjectione imperiali esse liberrimum.*" En Espagne également les prétentions impériales étaient repoussées.

La "République chrétienne" comprenait un nombre considérable de membres; d'après les calculs et suivant qu'on les considérait comme plus ou moins indépendants, ces membres atteignaient le chiffre de deux mille. C'est dire que la suprématie était difficile et même impossible, puisqu'à la moindre tentative pour la possession de la domination exclusive, des ligues se seraient formées parmi les opprimés en vue d'abattre ou d'affaiblir l'opprimeur. D'ailleurs il ne faut pas exagérer la force de cet empire, de ces royaumes, de ces républiques et de ces principautés; de chiffres exacts on n'en possède point, mais des calculs auxquels on s'est livré il appert qu'en 1480 la population de l'Europe ne dépassait guère cinquante millions d'habitants; quelques détails sont intéressants; on admet que la France avait une population de douze millions et demi; l'Italie, un peu plus de neuf millions, l'Espagne près de neuf millions, l'Angleterre trois millions et sept cent mille.

Au XIII^{ème} et au XIV^{ème} siècle, l'introduction dans ce qu'on peut appeler le monde international de cette époque était critiquée par les jurisconsultes imbus de la tradition romaine comme une réelle subversion. Dans leur système, les divers peuples n'étaient que des "sections de l'Empire romain," *sectiones Romani Imperii*. Pour les Romains, le terme *jus gentium* signifiait, dans le sens large, le droit commun aux peuples civilisés, embrassant le droit public et le droit privé; il signifiait dans le sens étroit les principes régissant les rela-

tions du peuple romain envisagé comme un ensemble avec les peuples étrangers envisagés de même.¹ Des jurisconsultes avaient montré le *jus gentium* pris dans le sens étroit, donnant naissance à la formation de peuples distincts et par conséquent à la fondation de royaumes, à l'entrecours de communautés politiques et enfin aux guerres. Au XIII^{ème} et au XIV^{ème} siècle, les glossateurs et les commentateurs, qui défendaient les prétentions du Saint Empire romain, enseignaient que cette notion d'un *jus gentium* donnant naissance à la formation de peuples distincts entraînait la destruction de l'unité. A leurs yeux, le droit des gens devient blâmable. Dans la glose d'Accurse, ce droit apparaît comme une œuvre des hommes. "Il leur fallait des statuts, est-il dit, et pour cela ils en établirent un grand nombre, notamment la guerre et la captivité; l'ensemble s'appela le droit des gens."

Comme science distincte, ce que les publicistes ont appelé droit des gens, droit entre nations, droit public européen, droit international, n'apparaît pas encore au moyen âge. Mais comme nous l'avons vu, théologiens, canonistes et publicistes traitent déjà un certain nombre de questions qui se rapportent surtout aux relations belliqueuses. Les guerres, est-il besoin de le dire, étaient fréquentes et ce n'étaient pas seulement des guerres entre communautés politiques ou entre princes. La plaie de ces siècles lointains fut la guerre privée, la *Faustrecht*, la *Faida*, comme on la désignait: c'était, dans le sens étendu, le droit de tout homme libre de se faire justice à lui-même en attaquant celui qui l'avait lésé et en entraînant dans sa querelle sa famille tout entière. L'Eglise lutta avec énergie contre cet odieux état de choses; les dispositions insérées dans les recueils de droit canonique relatives au recours aux armes et qui proviennent de canons édictés par les conciles ou de décrétales publiées par les papes ont en vue la guerre privée plutôt que la guerre publique, et c'est ainsi que longtemps les auteurs discutèrent la question de savoir si les règles formulées pour la *Treuga Dei*, la trêve de Dieu, s'appliquaient à la guerre publique. Dans la plupart des pays, le pouvoir central, quelque faible qu'il fût, se donna pour tâche d'enrayer le mal, en exigeant pour la guerre privée l'observation de certaines conditions, en réduisant le nombre de ceux qui avaient le droit strict de la faire, en imposant des délais. Ici également les écrivains accomplirent leur devoir: théologiens, canonistes et civilistes furent unanimes à réserver aux princes et aux chefs des communautés politiques le droit de faire la guerre.

¹ALPHONSE RIVIER, *Principes du droit des gens* (Paris, 1896), tome I, p. 5.

Parmi les hommes qui exercèrent en ces matières une influence bienfaisante et durable, on peut citer Gratien et Saint Thomas d'Aquin. Gratien enseigna à Bologne et composa, entre 1139 et 1150, un recueil destiné à l'enseignement du droit canonique: c'était la *Concordia canonum discordantium* ou, comme la postérité l'appela, le *Decretum*. Gratien se faisait le défenseur des prétentions du Saint-Siège; aussi acquit-il dans la plupart des pays de la Chrétienté des partisans qui propagèrent son œuvre, s'en servirent de manuel pour leurs leçons et la commentèrent. Pour donner une idée de l'importance du *Decretum*, il suffit de rappeler qu'il fut reproduit en de nombreuses copies manuscrites et que, dès l'invention de l'imprimerie, il eut de multiples éditions. La première impression fut exécutée à Strasbourg en 1471 et depuis cette date jusqu'en 1500 seulement on compte trente-neuf éditions. Gratien traite de la guerre dans la Cause xxiii de la deuxième partie du Décret. Il pose huit questions. Il admet que la guerre puisse être légitime, mais il met pour condition qu'elle soit imposée par la nécessité et il la décrit comme une situation dans laquelle il faut agir non par cupidité ni avec cruauté, mais dans le but d'aboutir à la paix.

Saint Thomas d'Aquin est également une influence extraordinaire. Il avait enseigné à Paris, à Cologne, à Rome, en diverses villes d'Italie. En 1274, il fut désigné pour prendre part aux travaux du concile œcuménique; mais il mourut, le 7 mars de cette année, dans un couvent du diocèse de Terracine, pendant son voyage pour Lyon, où l'assemblée avait lieu; il était âgé de 48 ans.

Le grand ouvrage de Saint Thomas d'Aquin est la *Summa totius theologiae* dont la composition commença en 1265 et occupa les neuf dernières années de la vie de l'auteur. Celui-ci a consacré au droit de la guerre la quarantième question de la *Secunda secundae*. En quatre articles, il examine les questions suivantes: "Est-ce toujours un péché de faire la guerre? Est-il permis aux clercs et aux évêques de faire la guerre? Dans la guerre, est-il permis de tendre des embûches? Est-il permis de combattre, les jours de fête?" Est-il besoin de dire qu'en toutes les pages où il répond à ces questions, l'auteur fait preuve de modération, d'humanité, d'esprit de conciliation: plusieurs de ses phrases sont devenues autant de maximes qu'ont reproduites, en les approuvant, les écrivains des siècles suivants dans leurs dissertations sur le droit de la guerre.

Un écrivain a porté sur Saint Thomas d'Aquin un équitable jugement. "Il n'apparaît pas dans l'histoire," écrit-il, "comme un

inventeur, comme l'initiateur d'une doctrine nouvelle qui a soulevé en même temps des adhésions enthousiastes et des hostilités passionnées. Sa tâche, sa mission me semble plutôt avoir été de résumer et de coordonner, dans un grand esprit de modération, avec beaucoup de perspicacité, de logique et de bon sens, les doctrines les plus répandues, ou du moins les plus puissantes de son temps, de manière à en former un ensemble harmonique et propre à l'enseignement; car dans ses œuvres on sent toujours le professeur."¹

Sans diminuer en aucune façon la valeur personnelle de Saint Thomas d'Aquin, on peut dire que son influence fut due surtout au fait qu'il appartenait à l'Ordre des Dominicains fondé par Saint Dominique de Guzman. Celui-ci avait commencé, en 1205, à prêcher dans le Languedoc contre les Albigeois, mais le travail des conversions, la "sainte prédication," comme on disait, n'avait guère produit de résultats. Quelques années plus tard, il créa à Toulouse un institut pour la prédication, début modeste d'une institution qui devait s'étendre à travers les siècles sur le globe tout entier. En 1215, il obtint l'assistance de l'évêque. Comme le concile général, tenu la même année, avait défendu la création de nouveaux ordres, il lui fut impossible d'obtenir l'appui d'Innocent III; mais, en 1216, il reçut l'approbation d'Honorius III. L'Ordre des Frères Prêcheurs comptait alors dix-sept membres; à la mort de Saint Dominique, survenue en 1221, l'œuvre était florissante; il y avait soixante maisons dans différents pays de la Chrétienté et plus de cinq cents frères. Ce fut seulement sous le pontificat de Grégoire IX, qui régna de 1227 à 1241, que les Dominicains se virent attribuer des pouvoirs judiciaires dans les questions d'hérésie, comme mandataires du Saint-Siège et auxiliaires des évêques.²

En 1219, Honorius III, en recommandant le nouvel Ordre, parlait exclusivement de la prédication à laquelle ses membres étaient voués. La prédication de la foi exigeait une préparation doctrinale; aussi l'étude était-elle considérée comme obligatoire. "Les dominicains," écrit un auteur, "devaient s'exercer particulièrement en tout ce qui pouvait servir à la réfutation des hérétiques et à la défense de la foi. Ils ne devaient étudier la métaphysique que dans les limites tracées par les constitutions. Il leur était interdit de se livrer à des spéculations subtiles et de cultiver l'alchimie. La morale, la théologie, l'étude du *Liber sententiarum* de Pierre Lombard, vaste encyclopédie

¹H. R. FEUGERAY, *Essai sur les doctrines politiques de Saint Thomas d'Aquin*, précédé d'une notice sur la vie et les écrits de l'auteur par M. BUCHEZ (Paris, 1857), p. 8.

²TH. DE CAUZONS, *Histoire de l'Inquisition en France*, tome I (Paris, 1909), p. 439.

théologique, devaient passer avant la philosophie. Il était alors impossible d'étudier la théologie sans savoir à fond la logique."¹

De nos jours un membre de l'Ordre a rendu un hommage mérité aux Dominicains: "Pour le Frère Prêcheur," dit-il, "d'après l'institution de Saint Dominique, l'étude est une obligation de règle, une fonction universelle, nécessaire, permanente. Et sans aller aussi loin que le célèbre cardinal Cajetan, qui enseignait que tout Dominicain qui ne consacre pas quatre heures par jour à l'étude est en état de péché mortel, il est certain qu'un Dominicain, qui d'habitude ne s'occupe pas du travail intellectuel, est en dehors de sa voie, en faute grave contre sa Règle."²

Un des livres de prédilection des dominicains fut nécessairement la *Summa totius theologiae* de l'homme, qui était la gloire de leur Ordre, comme il était l'honneur de l'Eglise tout entière. Les doctrines enseignées par Saint Thomas eurent ainsi un long retentissement.

Dans la dernière moitié du XIV^{ème} siècle des livres commençaient à paraître que leurs auteurs avaient consacrés à des parties spéciales de ce qui forme aujourd'hui le droit des gens. On peut citer comme le plus ancien parmi les ouvrages du même genre qui ont été conservés le traité *De bello* de Jean de Legnano, professeur à Bologne, où il mourut en 1383. Cet auteur avait rempli des fonctions diplomatiques à diverses reprises. Il s'occupait à la fois de droit, de théologie, de philosophie, de morale et d'astrologie.³ Au point de vue d'astrologie, curieuses sont les élucubrations qui figurent dans son livre, et qui, du reste, n'étaient nullement choquantes pour cette époque. Un autre ouvrage est *L'Arbre des batailles* d'Honoré Bonet. Celui-ci était né en Provence et appartenait à l'Ordre de Saint-Benoit. En 1368—il avait alors au moins 25 ans—il fit un voyage à Rome. En 1382, il était pourvu du bénéfice de Selonnet dans le diocèse d'Embrury. On le voit ensuite à l'Université d'Avignon où il devient docteur en décrets. Son ouvrage a été composé probablement vers 1384. Une partie est consacrée au droit de la guerre. En 132 chapitres, l'auteur traite de l'origine de la guerre, de la légitimité de la guerre contre les infidèles, des droits de l'empereur, du pape et des rois au sujet de la guerre, des questions concernant les choses prises à l'ennemi, la rançon des prisonniers et d'autres questions analogues. De nobles sentiments se manifestent dans ces pages si curieuses et si intéressantes.

¹CHARLES THUROT, *De l'organisation de l'enseignement dans l'Université de Paris au moyen âge* (Paris, 1850), p. 115.

²D. A. MORTIER, des Frères Prêcheurs, *Histoire des maîtres généraux de l'Ordre des Frères Prêcheurs*, tome I (Paris, 1903), p. 63.

³THOMAS ERSKINE HOLLAND, *Studies in international law* (Oxford, 1898), p. 44.

Mentionnons que Christian de Pison a mis à profit l'ouvrage du prieur de Selonnet dans son *Traité des faits d'armes et de chevalerie*. Honoré Bonet et Christian de Pison ne furent pas sans exercer une certaine influence. L'*Arbre des batailles*, en effet, fut reproduit en de superbes manuscrits qui faisaient partie des bibliothèques de grands princes et, quand l'imprimerie fut découverte, il eut de nombreuses éditions. L'ouvrage de Christian de Pison obtint sa part d'honneurs.

Grotius a indiqué les noms de quelques auteurs. Il cite des ouvrages spéciaux, "composés les uns par des théologiens, comme ceux de François de Vitoria, d'Henri de Gorcum, de Wilhelmus Matthaei, de Jean de Carthagène; les autres par des jurisconsultes, comme ceux de Jean Lopez, de François Arias, de Jean de Legnano, de Martin de Lodi." Il reproche à ces auteurs le manque d'ordre et d'exactitude et surtout le manque de la connaissance de l'histoire. Il reconnaît que Pierre du Faur de Saint Jovis a tâché de suppléer à cette lacune dans quelques chapitres de ses *Semestria* et que deux autres écrivains se sont proposé le même but, et avec plus d'étendue ont rapporté à quelques définitions et à quelques maximes générales les exemples qu'ils réunissaient. "Je veux dire," ajoute-t-il, "Balthazar Ayala et Albéric Gentil, surtout le dernier, du travail de qui j'avoue que j'ai tiré quelque secours, comme je crois que d'autres pourront en profiter." Outre ces indications Grotius fournit quelques renseignements généraux et il désigne parmi les auteurs qu'il a consultés pour le droit naturel et pour le droit des gens, les écrivains de l'antiquité classique, les Pères de l'Eglise, les scolastiques "qui montrent souvent beaucoup de génie," et les jurisconsultes qui se sont attachés à l'étude du droit romain. Parmi ces jurisconsultes, il cite Irnerius et ses successeurs "tels que Accurse, Bartole et un grand nombre d'autres qui ont régné pendant longtemps dans le barreau," et ceux qui ont joint la connaissance des belles-lettres avec l'étude du droit; il fait aussi allusion à Alciat et à ses disciples et cite les noms de Covarruvias, de Vasquez, de Bodin et d'Hotman. Parmi tous ces écrivains il citait un dont on n'a pu reconstituer le nom qu'il y a une trentaine d'années, c'est Wilhelmus Matthaei. Le nom véritable est Wilhelmus Matthiae, auteur du *Libellus de bello justo et licito*, paru à Anvers en 1514.

Parmi ces noms nous remarquons celui de François de Vitoria qui fait l'objet de cette étude. Grotius ne l'a pas seulement cité dans les *De jure belli ac pacis libri tres*. Auparavant il l'avait mentionné à plusieurs reprises dans le *De jure praedae commentarius*, composé en 1604 et publié en 1868 par les soins du professeur Hamaker.

Avant François de Vitoria, le droit de la guerre avait fait l'objet des études d'auteurs espagnols. C'est Saint Isidore, évêque de Séville de 596 à 636, qui à une époque où la science du droit des gens n'était pas formée, inséra dans son ouvrage les *Etymologiae* une définition ou plutôt une description du *jus gentium* qui se rapproche beaucoup de la conception moderne. D'après Henri Dirksen, il avait emprunté les textes concernant le *jus naturale*, le *jus civile*, et le *jus publicum* aux *Institutes* d'Ulpien, qui plaçaient le *jus militare* à côté du *jus gentium* et qui en traitaient. Le *jus gentium* de Saint Isidore correspond presque entièrement à notre droit international et à côté de cette classification se trouve le *jus militare*, énumération des sujets qui rentrent dans le droit de la guerre. Ces indications concernant le *jus gentium* et le *jus militare* figurent au V^{ème} livre des *Etymologiae*; au XVIII^{ème} livre l'auteur traite de la guerre et en énumère les espèces diverses. Au surplus, une circonstance contribua à donner une importance exceptionnelle aux considérations émises sur le droit de la guerre par le savant évêque: au XII^{ème} siècle, Gratien les inséra dans son recueil avec d'autres textes du même auteur, et comme le *Decretum* fut discuté et commenté pendant des siècles et qu'il est encore une part essentielle du corps du droit canonique, elles ont pris une importance considérable dans l'enseignement et dans la doctrine.

Mention doit être faite de Saint Raymond de Peñafort. Né entre 1175 et 1185, au château de Peñafort, en Catalogne, il avait suivi les cours de l'université de Bologne, où il devint docteur en droit et où il enseigna de 1216 à 1219. Il rentra en Espagne, où il fut nommé chanoine de Barcelone. En 1222, il entra dans l'Ordre de Saint Dominique. Il se vit appeler à Rome par Grégoire IX pour faire une nouvelle collection canonique, formée des compilations antérieures et des décrétales de ce pape. En 1238, il fut élu général de l'Ordre des Dominicains, mais au bout de deux ans, il se démit de ses fonctions. Il retourna dans sa patrie, où il lutta pour l'unité de la foi contre les hérétiques, les juifs et les musulmans. Il se montra grand partisan de l'étude des langues orientales, en vue surtout de former des religieux capables de prêcher la doctrine chrétienne. Il mourut en 1275. Outre le recueil des *Décrétales de Grégoire IX*, Saint Raymond de Peñafort a composé la *Summa poenitentiae*, où sont examinées notamment des questions relatives au droit de la guerre.

Un monument juridique, curieux par l'abondance des matières dont il traite et par ce qu'on pourrait appeler la précocité d'un grand nombre de ses dispositions qui sont réellement longtemps en avance de

l'époque où elles furent rédigées, tel est le recueil, *Las siete partidas*, œuvre du roi Alphonse X de Castille, qui eut comme collaborateurs Jacome Ruiz, Fernando Martinez et Roldum. Les *Siete partidas* s'occupent de droit ecclésiastique, de politique, de législation, de procédure, de droit pénal; le droit de la guerre est l'objet d'une réglementation fort minutieuse. Dans la deuxième *Partida*, des chapitres sont consacrés à l'organisation militaire et à la guerre. Pour ce qui concerne la guerre, des emprunts sont faits aux *Etymologiae* de Saint Isidore de Séville dont nous venons de parler. En plusieurs points l'influence du droit musulman est fort apparente. Le droit maritime est aussi traité. Commencée en 1256, la rédaction du recueil fut terminée en sept années.

Il est juste de citer ici un des grands théologiens de l'Espagne dont les ouvrages renferment des considérations relatives à la guerre et aux dispositions canoniques qui s'y rapportent. Alphonse Tostado naquit en Castille, vers l'an 1400; il étudia probablement à Salamanque et il se distingua comme théologien et comme canoniste. Il devint évêque d'Avila et prit part aux travaux du Concile de Bâle. Il mourut en 1455. Dans l'édition de Venise de 1596, les œuvres de Tostado comprenaient vingt-trois tomes in-folio; le titre du tome 1^{er} rappelle les mérites de l'auteur qui était "philosophe, théologien, très savant en droit canonique et en droit impérial, versé en grec et en hébreu"; la préface ajoute qu'il était instruit en mathématiques et en géographie. Quelques phrases de ses écrits méritent d'être citées. Il rappelle que "*Bellum justum est justitiae executio*," c'est-à-dire que la guerre juste est une exécution par voie de justice. Selon son enseignement, "dans une guerre juste tout ce qu'un homme peut prendre devient la propriété du capteur, en vertu du droit divin et du droit des gens, et l'homicide est commis en toute justice; mais la guerre injuste ne diffère en rien du brigandage public." Il ajoute que "dans la guerre juste il n'est rien qu'on ne puisse faire contre l'ennemi, si ce n'est manquer à la vérité." "Les guerres sont justes," dit-il, "quand elles se font pour obtenir réparation d'injures, restitution d'objets enlevés, ou dédommagement de torts; une fois commencée, la guerre juste peut être continuée jusqu'à ce que les torts, les objets enlevés et les dépenses faites aient été récupérés." L'auteur a en vue, nous tenons à le remarquer, non seulement la guerre publique, mais aussi la guerre privée quand elle est conduite conformément aux règles déterminées par le droit du pays. Ajoutons qu'Alphonse Tostado défendait dans ses écrits la thèse de la supériorité des conciles œcuméniques sur les papes.

Il convient de citer Gonsalve de Villadiégo. Il était né à Villadiégo dans le diocèse de Burgos. Il étudia à Salamanque où il devint docteur en droit et où il fut appelé à enseigner. Chanoine de Tolède en 1476, il fut désigné par Ferdinand et Isabelle pour occuper dans le tribunal de la Rote à Rome le poste d'auditeur pour les affaires d'Espagne. Il mourut à Rome peu après sa promotion au siège épiscopal d'Oviedo. Il a écrit un *Tractatus de legato*.

Joannes Lupus est originaire de Ségovie. On possède sur lui quelques renseignements. On sait qu'il se rendit à Rome, où il fut emprisonné au Château Saint Ange; mais on ignore les motifs de sa détention. Au tome XIII du *Tractatus universi juris* de François Ziletti, première partie, folio premier, figure une lettre datée du sixième jour des calendes de septembre de 1491; elle a été écrite dans la ville de Sienne par Joannes Lupus, *Sedis Apostolicae protonotarius et Segobiensis decanus*. Lopez a été vicaire de l'Archevêque de Sienne, le cardinal Piccolomini, plus tard Pie III. Il mourut à Rome en 1496. Un de ses écrits, *De matrimonio et legitimatione*, est daté du Château Saint Ange, le sixième jour des calendes de novembre 1478. Deux autres de ses traités sont intitulés: *De confoederatione principum* et *De bello et bellatoribus*.

On peut citer François Arias de Valderas, qui était originaire de l'ancien royaume de Léon. Vers 1530, il était membre du collège espagnol de Bologne; en 1532, il soutint une thèse à Rome, qui, un peu développée, fut publiée en 1533, dans la capitale du monde chrétien sous le titre de *De bello et ejus justitia*. Arias est un amant de la paix, mais on constate avec regret qu'il admet la persécution des hérétiques et qu'il cite à ce sujet l'exemple de Jésus chassant les vendeurs du Temple.

II.

Dans l'histoire de l'humanité il n'est peut-être point d'époques comparables en importance à ces années glorieuses qui marquèrent la fin du XV^{ème} et le commencement du XVI^{ème} siècle. Alors s'accomplit cet événement, dont on ne saurait exagérer la grandeur: la découverte du nouveau monde, en d'autres termes l'addition au théâtre de l'activité des hommes d'un immense champ et l'attribution à leurs plans politiques du globe tout entier. Combien l'imagination devait être frappée quand successivement venait dans les pays d'Europe, où se concentrait la république chrétienne, la *respublica christiana*, la nouvelle que l'audacieuse expédition de Christophe Colomb avait fait

découvrir des terres dont personne ne connaissait jusqu'alors l'existence, puis à de nombreuses reprises ces autres nouvelles concernant les luttes des *conquistadores*, leurs heureuses issues, la conquête par les Espagnols de pays doués par la nature et renfermant les plus grandes richesses. La découverte du chemin de l'Asie par le Cap de Bonne Espérance, œuvre des Portugais, ne devait pas moins paraître merveilleuse et étonner les imaginations les plus vives. Comme pour ajouter encore à ces faits, trente à quarante ans auparavant l'imprimerie venait d'être découverte, fournissant ainsi le moyen précieux de communiquer les écrits et de leur assurer la circulation et l'expansion. Faut-il rappeler que dans le même espace de temps s'était produit ce mouvement glorieux qui s'appelle la Renaissance et grâce auquel les esprits cultivés s'étaient retrouvés en face de la beauté classique. Si l'on s'en tient à l'Espagne, des causes nouvelles de se réjouir apparaissaient pour les écrivains de cette époque : Chrétiens, ils voyaient triompher la Croix sur le croissant ; Espagnols, ils voyaient se terminer par la victoire complète les guerres que pendant tant de siècles leurs ancêtres avaient faites aux Maures.

C'est à cette époque d'importance capitale que vécut François de Vitoria dont la vie et les œuvres font l'objet de ces pages.

François de Vitoria est ainsi appelé de Vitoria, chef lieu de l'Alava, où il naquit en 1480, d'après certains auteurs, dans les premières années de la neuvième décade du XV^{ème} siècle, d'après d'autres. Ses parents émigrèrent à Burgos quand il était encore enfant et c'est là qu'il reçut les premiers éléments d'instruction. Fort jeune il prit l'habit de Dominicain dans le couvent de San Pablo à Burgos, une des trois grandes maisons de l'Ordre en Castille ; il suivait en cela l'exemple de son frère aîné qui était déjà devenu membre de l'Ordre. Après l'achèvement de son noviciat, François de Vitoria fut envoyé par ses supérieurs à Paris où l'Ordre possédait un collège. En effet, le 6 août 1218, les Frères Prêcheurs avaient pu s'installer dans un hospice pour les pauvres étrangers qu'avait fondé Jean de Barastre, doyen de Saint-Quentin, chapelain du roi, et le 3 janvier 1221, ils avaient reçu solennellement la confirmation de cette propriété. La maison de Saint-Jacques n'avait pas tardé à être admise dans l'Université et des conventions avaient été conclues pour les leçons et les grades, conventions qui, notons-le, donnèrent lieu fréquemment à des conflits.¹ C'est là, rapportons-le, que lors de la Révolution française

¹VICTOR LE CLERC, *Discours sur l'état des lettres au quatorzième siècle*. Dans *Histoire littéraire de la France au quatorzième siècle* (Paris, 1865), tome I, p. 101.

se tinrent les réunions de ceux qu'à raison même du local où ils siégeaient, on appela les Jacobins.

A Paris, un des maîtres de François de Vitoria fut Pierre Crockaert, *Petrus de Bruxellis*. Celui-ci était né à Bruxelles vers 1460; d'abord disciple ardent de l'Ecossais John Mair, et nominaliste comme lui, il était devenu dominicain en 1503 et avait témoigné le plus grand zèle pour Saint Thomas d'Aquin. Dans un de ses livres, où il traite de questions concernant la Logique d'Aristote et sur un point de la doctrine de l'Ange de l'Ecole, il s'intitule *Divi Thomae doctrinae interpretes et propugnator acerrimus*. Des liens assez étroits rattachaient François de Vitoria au théologien belge, puisqu'en 1512 il surveillait l'impression d'un ouvrage de ce dernier, le commentaire sur la Seconde Seconde de la Somme de Saint Thomas. Lecteur des *Sentences*, Crockaert était devenu ensuite bachelier et en 1510 il était licencié. Il mourut en 1514.

François de Vitoria vit reconnaître son mérite; en 1513 il fut désigné par le chapitre général de l'Ordre tenu à Gênes pour être promu aux grades et, deux années plus tard, il fut confirmé par le chapitre général tenu à Naples dans la charge de faire leçon sur les *Livres des sentences* de Pierre Lombard. En 1520 il fut admis à la Sorbonne et, le 24 mars 1521, il obtint la licence en théologie.

Dans ses études sur le droit espagnol, Eduardo de Hinojosa a dit quesi, avant François de Vitoria, l'Espagne eut des théologiens notables, c'est néanmoins à lui qu'est due la renaissance de la théologie.¹ Il est incontestable que François de Vitoria ne donna pas seulement une impulsion vigoureuse à sa science de prédilection, mais qu'il lui imprima un caractère nouveau: il l'embellit et il l'élargit; grâce à lui, la plupart des théologiens espagnols renoncèrent à la forme incorrecte, rude, barbare qu'avaient employée leur devanciers; grâce à lui, dans l'argumentation, des idées vinrent prendre la place occupée précédemment par des phrases; grâce à lui également, dans l'étude de la théologie d'autres sciences furent mises à profit. C'est ainsi que, dans ses leçons consacrées aux droits des Indiens et au droit de la guerre, les problèmes sont traités, non comme s'ils étaient sans intérêt pratique et actuel, destinés uniquement à exercer la raison et à fournir l'occasion d'objections et de réfutations, mais comme des questions soulevées par de graves événements et dont la solution intéresse tous les hommes de cœur, puisque dans la pratique immédiate elle produit des effets souvent redoutables. De plus, l'illustre publiciste ne se

¹EDUARDO DE HINOJOSA, *Estudios sobre la historia del derecho español* (Madrid, 1903), p. 235.

contente pas d'un vain étalage de connaissances: il est plein de générosité et plein de bonté et son enseignement respire les plus nobles sentiments.

Des écrivains ont attribué à l'Université de Paris le mérite d'avoir inculqué à François de Vitoria la doctrine qu'il se serait borné à transporter en Espagne. Pour se contenter de semblables explications, il faut ne point connaître l'état de l'enseignement dans la capitale de la France au commencement du XVI^{ème} siècle, et ne point savoir que ni l'amour de l'innovation, ni même la simple curiosité d'esprit n'avait d'action sur la grande majorité des professeurs, pour lesquels toute la science consistait en des disputes sans fin sur les mots et à propos de mots. En parlant ainsi, nous ne songeons nullement à reprocher à l'Université de Paris de s'être prononcée contre la doctrine de Luther et de l'avoir condamnée. D'autres universités l'avaient déjà réprouvée. Le réformateur menaçait du reste dans leur existence les institutions ecclésiastiques et il devait s'attendre à de violentes attaques. Mais, même dans les limites de l'orthodoxie, était-il bien nécessaire de se mettre en opposition avec tous ceux qui ne songeaient pas exclusivement à considérer les doctrines du passé comme la suprême perfection. Dans les dernières années du XV^{ème} siècle, Erasme séjourna à Paris et vit les maîtres à l'œuvre; il avait, certes, le jugement droit et voici la sentence qu'il prononça: "Y a-t-il cervelles plus imbéciles que celles de ces théologastres? Je ne connais rien de plus barbare que leur langage, de plus grossier que leur esprit, de plus épineux que leur doctrine, de plus violent que leurs discours." "En 1500," écrit Louis Delaruelle, "l'Université de Paris est, à peu de chose près, par son organisation et par ses méthodes, ce qu'elle était un siècle plus tôt. C'est toujours la formidable machine construite au moyen âge pour fabriquer des théologiens. Tout continue d'y être subordonné à cette fin. L'étude des belles-lettres tient tout entière dans celle de la grammaire et on la relègue au degré le plus bas de l'enseignement. La logique est toujours la science des sciences; à l'étude approfondie des auteurs on continue de préférer la dispute."¹

En 1527, Pierre de la Ramée, *Ramus*, étudiait à l'Université de Paris. "Quand je vins à Paris," écrivit-il plus tard, "je tombé es les subtilitez des sophistes et m'apprit-on les arts libéraux par questions et disputes, sans m'en montrer jamais un seul autre ni profit, ni usage."² Pour faire comprendre les vices de cet enseignement disons que la dispute y était tout. "On dispute avant le dîner," écrivait Juan Luis Vivès en 1531, "on

¹LOUIS DELARUELLE, *Guillaume Budé: Les origines, les débuts, les idées maîtresses* (Paris, 1907), p. 54.

²CHARLES WADDINGTON, *Ramus (Pierre de la Ramée): Sa vie, ses écrits et ses opinions* (Paris, 1855), p. 23.

dispute après le dîner, on dispute en public, en particulier, en tout lieu, en tout temps. Les boursiers des collèges disputaient tous les samedis; chacun était à son tour 'répondant,' *respondens*, et 'opposant,' *opponens*." Ramus que nous venons de citer fait une description plus complète encore. "Je croyais alors (l'écolier doit croire, ainsi le veut Aristote)," écrit-il, "je croyais qu'il ne fallait pas trop m'inquiéter de ce qu'est la logique et de ce qu'elle se propose, mais qu'il s'agissait uniquement d'en faire l'objet de nos cris et de nos disputes: je disputais en conséquence et je criais de toutes mes forces. S'agissait-il de défendre en classe une thèse sur les catégories, je croyais de mon devoir de ne céder jamais à mon adversaire, eût-il cent fois raison, mais de chercher quelque distinction bien subtile afin d'embrouiller toute la discussion. Étais-je, au contraire, l'argumentant, tous mes soins, tous mes efforts tendaient, non pas à éclairer mon adversaire, mais à le battre par un argument quelconque, bon ou mauvais: c'est ainsi qu'on m'avait instruit et dressé. Les catégories d'Aristote étaient comme une balle qu'on livrait à nos jeux d'enfants, et qu'il fallait regagner par nos cris quand nous l'avions perdue: si au contraire nous la tenions, nous ne devions la laisser enlever par aucune clameur. J'étais donc persuadé que toute la logique se réduisait à discuter sur la logique avec des cris véhéments et forcenés."¹

On le voit, ce n'est point chez les maîtres de philosophie ou de théologie de Paris que François de Vitoria a pu acquérir le fonds précieux où se réunissaient l'esprit de recherche et d'innovation, la tendance vers le progrès, l'amour du prochain, le sentiment de la solidarité. La nature l'avait doué de grandes qualités; en lui-même, il portait une force que rien ne devait comprimer ni étouffer. Il eut ensuite le bonheur de se trouver dans un milieu propice au développement des dons innés. Tout démontre, en effet, qu'il fut en rapports constants avec les humanistes qui, à côté des représentants de l'enseignement officiel et en dépit de leur hostilité et de leur colère, faisaient alors de la capitale de la France le centre d'un vaste mouvement rénovateur.

En 1520, durant son séjour à Paris, François de Vitoria était lié avec un des hommes les plus méritants de l'humanisme, Josse van Assche, *Jodocus Badius Ascensius*, Josse Bade, comme l'appelèrent des écrivains français. Celui-ci était né à Gand; après avoir suivi des cours à l'Université de Louvain, il s'était rendu en Italie où il avait étudié le latin et le grec; plus tard, il avait enseigné à Valence et à Lyon, puis il s'était établi comme imprimeur à Paris, et, sans aban-

¹CHARLES WADDINGTON, *ouvrage cité*, p. 24.

donner ses travaux littéraires, il avait édité nombre d'ouvrages parmi lesquels il y en avait beaucoup dont les représentants des théories rénovatrices étaient les auteurs ou bien les annotateurs.

Le nom de François de Vitoria figure sur le titre de deux volumes de sermons de Pedro de Covarrubias, dominicain espagnol: il est indiqué qu'il a revu l'ouvrage. Sans doute, s'il était isolé, un tel fait n'autoriserait aucune conclusion de quelque force. Mais à ce fait s'ajoutent d'autres faits qui démontrent que François de Vitoria n'était point un étranger pour cette "République littéraire" comme on l'a appelée, qui s'était constituée dès l'année 1516 et dont le chef reconnu était Erasme. Quand en 1527, une campagne de dénonciations s'ouvrit en Espagne contre l'illustre savant, celui-ci s'adressa par lettre à François de Vitoria et Juan Luis Vivès, leur ami commun, se porta garant des éminentes qualités de ce dernier et attesta qu'il avait pour Erasme de l'affection et de l'adoration.

Grâce à son contact avec des hommes animés de nobles sentiments, François de Vitoria raffermi certainement ses penchants naturels et une influence bienfaisante l'aida à prendre en main la défense de la juste cause des Indiens. En traitant de la matière cruelle du droit de la guerre, il affirma des principes empreints de modération et de mansuétude. Presque tout le mouvement iréniste du commencement du XVI^{ème} siècle procéda de l'humanisme et celui-ci avait agi sur la pensée du publiciste espagnol.

Peu après 1521, François de Vitoria rentra dans sa patrie où il fut nommé premier régent du collège dominicain de Saint Grégoire à Valladolid. En 1526, la chaire primaire de théologie devint vacante à l'Université de Salamanque, par la mort de Pedro ou plutôt Pablo de Léon, qui l'avait occupée depuis 1507. Elle était au concours et, le 7 septembre 1526, les juges du concours l'attribuèrent à l'unanimité à François de Vitoria, qui prêta serment devant notaire le 21 septembre et fut titulaire de la fonction jusqu'à sa mort.

Un membre de l'Ordre de Saint Dominique a essayé récemment de montrer, d'après les renseignements fournis par les contemporains, la méthode d'enseignement et les qualités professorales du grand homme.

"François de Vittoria," écrit-il, "répondit à toutes les espérances; il les surpassa même. Sous sa direction puissante, le collège de Salamanque prit, en Espagne, une place hors ligne. Sa manière d'enseigner le distinguait de la plupart des autres professeurs. Au lieu de l'aridité des formules scolastiques dont il ne se servait que pour établir les bases de sa doctrine, il savait en exposer avec éloquence les beautés et les

grandeurs. Il ne dédaignait pas l'élégance du langage; il aimait à corroborer les conclusions de la théologie par d'heureuses citations des Pères, par des faits de l'histoire ecclésiastique. Ses cours, rendus attrayants par la grâce de son verbe, conquièrent rapidement la faveur universelle. Solidité de doctrine, élégance d'enseignement, tel se présente le long professorat de François de Vittoria. Pendant vingt ans, il tint la chaire de théologie de Salamanque, de 1526 à 1546, c'est-à-dire jusqu'à sa mort. Il forma les plus illustres disciples: Melchior Cano, Dominique Soto, Barthélemy de Médina et tant d'autres se glorifient de l'avoir eu pour maître. C'est lui qui, de leur propre aveu, comme de l'aveu des savants étrangers à l'Ordre, restaura en Espagne l'enseignement théologique; c'est lui qui, en unissant la solidité de la doctrine à la forme littéraire de la diction, donna la méthode qu'il fallait suivre pour rendre à la théologie la place d'honneur. Il n'écrivit point, mais ses disciples, avides de l'entendre, recueillirent pieusement ses doctes traités, quelques-uns du moins qui furent publiés depuis."¹

Les contemporains de l'incomparable professeur ont été unanimes à célébrer son talent d'exposition. Ils le louent aussi pour avoir dicté aux étudiants. Cette méthode n'était point nouvelle sans doute. Elle était employée à Paris depuis plus d'un siècle; elle était également employée en d'autres universités françaises. Elle parut utile, sans doute, parce que les maîtres espagnols avaient abusé de l'improvisation et avaient préféré trop souvent la grandiloquence et les phrases enflées à la clarté, à la simplicité et à la précision.

Les élèves de François de Vittoria ont tenu à rendre hommage à leur maître. L'un des plus illustres, Melchior Cano, l'a célébré en termes magnifiques. "L'Espagne," écrit-il dans *De locis theologicis libri duodecim*, "a reçu de la bonté singulière de Dieu ce Maître éminent de la théologie." Il l'appelle *Sacrae theologiae restaurator cui debent Hispaniae quod veram theologiam docuerit*. Il ajoute qu'il a augmenté, enrichi et rendu plus illustre la doctrine de Saint Thomas. "Ce que j'ai," dit-il ensuite, "de doctrine, digne d'être approuvé par les savants; ce que j'ai de prudence dans l'estimation des hommes et des choses; ce que j'ai de culture littéraire, culture dont je me sers dans mes ouvrages, plus que beaucoup d'autres scolastiques: science, prudence et éloquence, je dois tout à cet homme, que j'ai suivi comme un chef et auquel j'ai obéi, gardant avec soin ses préceptes et ses avis. . . . Les principes que j'enseigne appartiennent autant et plus à mon Maître qu'à

¹D. A. MORTIER, des Frères Prêcheurs, *Histoire des maîtres généraux de l'Ordre des Frères Prêcheurs*, tome v (Paris, 1911), p. 379-380.

moi-même, je tiens à lui rendre cette justice. Je veux que la science de cet homme illustre soit publiée et connue de la postérité. Quoique je m'avoue bien inférieur à lui, je veux lui dire de mon mieux le merci que je lui dois. Aussi je prie ceux qui liront mes œuvres de croire que mon Maître a été infiniment supérieur à tout ce que je puis dire."¹

Dominique Soto fait également l'éloge de François de Vitoria. Né à Ségovie, en 1494, il avait fait ses études à Alcalá et à Paris. À l'âge de trente ans il était entré dans l'Ordre de Saint Dominique. En 1532, il était devenu professeur de théologie à Salamanque pour le cours du soir, tandis que François de Vitoria enseignait le matin.

Un autre témoignage peut être invoqué parmi tant d'autres; c'est celui d'Alphonse Garcia Matamoros, l'auteur du livre, *De academiis et doctis viris Hispaniae, sive pro asserenda Hispanorum eruditione narratio apologetica*. Il appelle François de Vitoria "la splendeur de l'Ordre de Saint Dominique, l'honneur et l'ornement de la théologie, le modèle de l'antique religion. Comme Socrate fit autrefois pour la philosophie," dit-il, "il évoque du ciel la théologie."

L'enseignement n'absorba pas toute l'activité du grand professeur de Salamanque. En de nombreuses occasions il fut consulté par Charles-Quint qui lui soumettait des cas de conscience et le consultait sur des affaires de nature délicate. C'est ainsi qu'il eut à donner son avis sur la valeur des arguments que Henri VIII, roi d'Angleterre, invoquait en vue d'obtenir la nullité du mariage qu'il avait contracté avec Catherine d'Aragon, tante du monarque espagnol. La leçon, *De matrimonio*, publiée dans les *Relectiones* renferme un passage concernant cette cause historique.

En 1532, François de Vitoria prononça ses fameuses leçons, *De Indis* et *De jure belli Hispanorum in barbaros*, dans lesquelles il examina les titres que les Espagnols pouvaient invoquer pour justifier leur domination dans le Nouveau Monde. Nous aurons l'occasion de les examiner en détail.

En 1539, Charles-Quint soumit au professeur de Salamanque plusieurs questions concernant les affaires des Indes. La lettre est datée de Tolède, 31 janvier. L'année suivante, il lui adressa sur le même sujet une autre lettre, datée de Madrid, 31 mars.² Le 21 mars 1541, Charles-Quint consulta de nouveau l'homme en lequel il avait confiance. Il s'agissait d'une grave question, qui avait été portée devant le Conseil des Indes par Barthélemy de Las Casas: Était-il

¹D. A. MORTIER, *ouvrage cité*, tome V (Paris, 1911), p. 380.

²EDUARDO DE HINOJOSA, *ouvrage cité*, p. 245.

licite et convenable de baptiser les Indiens adultes, dans la forme usitée dans le Nouveau Monde, c'est-à-dire, sans leur donner une instruction religieuse préalable? Charles-Quint chargeait François de Vitoria d'examiner ce point, de consulter les théologiens de Salamanque qu'il jugerait utile d'interroger et de transmettre leurs opinions et la sienne. La conclusion fut conforme à la thèse de Las Casas.¹ Notons ici que le professeur de Salamanque était qualifié mieux que personne peut-être pour donner au sujet des Indiens une opinion réfléchie et bien informée. Plusieurs de ses disciples, avec lesquels il était resté en relations, étaient aux Indes Occidentales des missionnaires dévoués: ainsi Alonso de Veracruz et Domingo de Salazar, tous deux Dominicains, et dont le dernier, devenu professeur de théologie à Mexico a écrit un traité sur les titres que possédaient les rois d'Espagne à la domination sur les Indiens.²

Un grand événement se préparait pour l'Eglise. C'était la réunion d'un concile œcuménique. Il est difficile à notre époque de se rendre compte de l'importance que présentait alors la réunion des évêques du monde chrétien. Le souvenir n'était point perdu des luttes entre le Saint-Siège et les représentants ecclésiastiques des nations chrétiennes. Les souverains aussi bien que la clergé et que les simples fidèles se jetaient avec ardeur dans des contestations sans fin. Les catholiques restés fidèles et les partisans de Luther reclamaient avec une même ardeur la convocation des autorités ecclésiastiques pour décider ce qui était conforme au dogme et à la discipline.

A la suite de son entrevue avec le cardinal Cajetan, Luther avait appelé du pape mal informé au pape mieux informé, mais le 28 novembre, 1518, il avait appelé du pape lui-même au futur concile général et il avait renouvelé ce second appel après la condamnation prononcée par la bulle de Léon X du 15 juin, 1520, contre lui et contre ses adhérents.³ Dès 1523, la diète de Nuremberg avait demandé que le pape Adrien VI convoquât un concile en quelque ville d'Allemagne, et depuis lors les diètes n'avaient cessé d'exiger cette réunion. Le 2 juin, 1536, Paul III publia une bulle convoquant le concile pour l'année suivante; la ville désignée était Mantoue; mais le Saint-Siège rencontra de constantes difficultés; le pape publia jusqu'à six bulles pour proroguer ou convoquer de nouveau l'assemblée œcuménique et, enfin, une bulle du 19 novembre, 1544, ouvrit le concile pour le 15 mars, 1545. "Seule-

¹EDUARDO DE HINOJOSA, *ouvrage cité*, p. 195.

²*Ibidem*.

³ALBERT DESJARDINS, *Le pouvoir civil au Concile de Trente*. Dans *Revue critique de législation et de jurisprudence*, tome XXXIV (Paris, 1869), p. 3.

ment," écrit Frà Paolo Sarpi, " cela traina : le concile ouvrit le 13 décembre, 1545; il y avait les légats et les évêques au nombre de vingt-cinq."¹ Le lieu de réunion était Trente. La Curie romaine aurait préféré que l'assemblée siégeât dans une ville des Etats-Pontificaux; des tentatives furent faites dans ce but; les légats obtinrent des Pères la translation à Bologne; deux fois le Concile fut suspendu; deux fois il fut repris. Convoqué de nouveau, le 3 décembre, 1560, il clôtura ses travaux le 4 décembre, 1563. L'œuvre même du Concile ne nous intéresse pas ici : nous devons nous borner à résumer la situation qui était faite au Saint-Siège, aux évêques et aux gouvernements. On reprocha aux papes d'avoir rendu l'élément italien prépondérant; effectivement la majorité fut constamment formée de prélats dépendant de la Curie, et dans les derniers temps, il y avait 150 évêques italiens contre 66 évêques des autres nations. Les évêques des pays autres que l'Italie étaient en antagonisme avec le Saint-Siège, en ce sens du moins qu'ils ne cessaient d'affirmer l'indépendance de leurs fonctions spirituelles. C'est ainsi que l'archevêque de Grenade, Guerrero, se plaignait de ce qu'on transformait les évêques en vicaires généraux du pape, dépendants et amovibles, et que les prélats espagnols, en général, dénonçaient les usurpations du Saint-Siège sur l'autorité épiscopale et soutenaient qu'il serait impossible de remédier aux abus, si on ne rendait aux évêques tout ce que Rome avait usurpé sur eux.²

Les légats représentaient à la fois le Concile qu'ils présidaient et le pape dont ils étaient les agents. Les papes avaient d'abord souhaité la présence même des souverains et leur assistance personnelle aux travaux du Concile; mais, si ce vœu ne se réalisa pas, du moins, les princes entrèrent-ils en relations par correspondance et furent-ils représentés par des ambassadeurs. "Ceux-ci," dit un auteur, "étaient accrédités auprès du concile même, qui était traité comme une puissance. Aussi ne pouvaient-ils être reçus que si leurs lettres de créance étaient parfaitement en règle. En les présentant ils avaient l'habitude de haranguer le concile. Ils s'exprimaient de vive voix avec aussi peu de ménagement que leurs maîtres par écrit. Tout le monde sait quelle émotion excitèrent les discours d'Amyot, en 1551, de Pibrac, en 1562."³

Les Pères du Concile avaient deux espèces de réunions. C'étaient les sessions ou assemblées publiques et solennelles dans lesquelles se

¹*Histoire du Concile de Trente*, écrite en italien par PAOLO SARPI, de l'Ordre des Servites, traduit par PIERRE FRANÇOIS LE COURAYER, docteur en théologie d'Oxford (Londres, 1736), tome 1, p. 169.

²*Ibid.*, tome II, p. 313.

³ALBERT DESJARDINS, *article cité*, p. 221.

rendaient les décrets et qui furent seulement au nombre de vingt-cinq. C'étaient ensuite les congrégations ou assemblées préparatoires; elles étaient générales ou particulières.

Des théologiens collaboraient aux congrégations particulières et aux congrégations générales, qui étaient publiques, car les Pères étaient seuls admis en règle aux congrégations générales secrètes. "Au-dessous des Pères," dit l'auteur que nous venons de citer, "se trouvent les théologiens inférieurs, tels que les simples docteurs de Sorbonne, envoyés par le pape et par les rois ou amenés par les prélats. N'étant pas eux-mêmes prélats, ils n'avaient pas voix délibérative; l'accès des congrégations générales secrètes leur était fermé; il n'y en eut qu'un petit nombre qui obtinrent d'y entrer à la fin du concile; ils étaient admis et probablement rendirent de grands services dans les congrégations générales publiques et dans les congrégations privées. Eux-mêmes tenaient des réunions où ils préparaient toutes les autres et où les Pères assistaient quand ils voulaient."

On constate que parmi les théologiens qui collaboraient aux travaux du Concile de Trente, les Espagnols se distinguèrent entre tous. Ils purent, en effet, produire dans les discussions des hommes de la plus haute valeur, comme Dominique Soto et Melchior Cano, pour ne citer que ces deux noms. A la veille de la réunion du concile, le prince royal, qui fut plus tard Philippe II, agissant au nom de Charles-Quint, avait invité François de Vitoria à assister aux travaux de l'assemblée œcuménique, mais celui-ci s'était excusé en invoquant son âge et ses habituelles indispositions.¹ Il mourut d'ailleurs quelques mois après l'ouverture des travaux. Il a été remarqué que l'influence de l'illustre penseur fut extraordinaire sur les prélats espagnols qui siégèrent à Trente; on cite ses disciples qui étaient dans leurs rangs et on cite aussi ses anciens élèves qui figuraient parmi les théologiens.

L'Ordre des Dominicains avait généralement été fidèle au Saint-Siège. Son enseignement traditionnel le prouvait et les noms de membres éminents, comme celui de Jean de Torquemada, figuraient au premier rang parmi les partisans des droits du pape contre les prétentions des Conciles de Bâle et de Florence. En 1511, sous le pontificat de Jules II, neuf cardinaux, inspirés par le roi de France, Louis XII, et par l'empereur Maximilien, avaient convoqué à Pise un concile œcuménique dont l'ouverture devait se faire le 1^{er} septembre: leur thèse était que si le pape néglige ou refuse de convoquer un concile, ce droit

¹EDUARDO DE HINOJOSA, *ouvrage cité*, p. 201.

appartient au Sacré Collège. Le maître général de l'Ordre était alors le théologien fameux, Thomas de Vio, né à Gaëte, d'où est venu son nom Cajetanus. Celui-ci défendit aux frères prêcheurs de favoriser en quoi que ce soit l'assemblée de Pise et écrivit son traité, *De auctoritate Papae et Concilii utraque invicem comparata*. Il soutenait que le pape est seul chef suprême de l'Eglise; qu'il en est le législateur et le juge en dernière instance; que le concile ne peut lui imposer une loi ni le juger; que l'approbation papale donne seule force obligatoire aux décrets de l'assemblée œcuménique. Par des leçons publiées par ses élèves, nous connaissons les opinions que François de Vitoria aurait sans doute exprimées au Concile de Trente, si l'état de sa santé lui avait permis d'y assister, au sujet de la situation respective du pape et du concile et des rapports du pouvoir spirituel et du pouvoir temporel. Elles sont intitulées, l'une, *De potestate Ecclesiae*, l'autre, *De potestate civili*, et la troisième, *De potestate Papae et Concilii*.

Le savant théologien témoigne pour l'Eglise et pour son chef le plus profond respect. Il met à côté de la *Respublica spiritualis* la *Respublica temporalis* et il enseigne que l'une et l'autre sont parfaites, c'est-à-dire, qu'elles se suffisent à elles-mêmes: en d'autres termes, si l'une ou l'autre ne peut se maintenir indemne et intacte dans sa sphère propre, il lui est permis de faire tout ce qui est nécessaire pour accomplir son but. Le chef de l'Eglise a ainsi le droit d'agir, non en agissant immédiatement et directement comme s'il usurpait la puissance civile, mais en usant de la puissance spirituelle, en donnant ainsi des ordres. François de Vitoria applique son raisonnement au cas où une loi inique a été établie par un prince et au cas où des princes se font la guerre au sujet de quelque contrée et cela au détriment manifeste de la religion; dans cette dernière hypothèse, il admet que le souverain pontife interdise aux princes de se faire la guerre et, au besoin, s'établisse le juge de leur différend. En réalité, il prétend ne point empiéter sur l'autorité civile; ce qu'il veut c'est sauvegarder l'autorité spirituelle et la protéger contre des empiétements. Il cite à titre d'analogie le cas qui peut se présenter dans les affaires internationales. "Si," dit-il, "les Espagnols ne peuvent se défendre autrement contre les torts que leur infligent les Français, ils sont en droit d'occuper leurs villes, de mettre à leur tête de nouveaux princes, de punir les coupables et d'agir comme s'ils étaient les véritables maîtres: tous les docteurs sont de cet avis."

En ce qui concerne la situation respective du pape et du concile, François de Vitoria veut que le concile traite le pape avec déférence;

il exige que le scandale soit évité, mais il ne va nullement jusqu'à proclamer la supériorité du pape. Jean de Torquemada avait défendu, comme nous l'avons vu, les prérogatives du souverain pontife contre le Concile de Bâle, mais le même Torquemada avait assisté aux travaux du Concile de Constance qui avait déposé le pape Jean XXIII; et il avait donné son approbation à cette mesure. Cette approbation a pour le professeur de Salamanque une grande importance et il admet la convocation du concile contre la volonté du pape, si ce dernier détruit l'Eglise par ses mœurs. François de Vitoria n'admet même pas que, par sa seule volonté et sans motif raisonnable, le souverain pontife dispense de l'observation des décrets portés par les conciles.

Les droits de l'Empereur avaient fait, dans les siècles précédents l'objet non seulement de luttes violentes dans le domaine des faits, mais de discussions vives et animées entre les publicistes. Nous avons déjà vu comment les rois de France et d'Angleterre avaient affirmé leur autonomie. En Espagne, le roi Alphonse X de Castille, qui avait brigué la couronne impériale, avait fait, dans les *Siete partidas*, la plus haute situation à l'Empereur. "La dignité impériale," était-il écrit, "est la plus élevée et elle excelle sur toutes les autres dignités."

Les paroles des juristes, que les notions répandues dans le droit romain séduisaient, étaient significatives. Pour ne pas remonter plus haut, on peut citer Bartole de Sassoferrato, écrivant, au milieu du XIV^{ème} siècle, ces lignes:

"Si quelqu'un disait que l'Empereur n'est pas le monarque du monde entier, il serait hérétique, car il se prononcerait contre la décision de l'Eglise et contre le texte de l'Evangile portant: '*Exiit edictum a Caesare Augusto, ut describeretur universus orbis,*' ut hab. Luc., et ita etiam recognovit Christus imperatorem et dominum."

Au sujet d'une bulle papale niant la suprématie impériale, Bartole n'hésitait pas à reproduire et à approuver les paroles méprisantes de son maître, Cino de Pistoja: "*Pertranseat cum aliis erroribus canonistarum.*" Un contemporain de Bartole, Alberico de Rosciate, avait élevé des objections rationnelles contre la monarchie universelle de l'Empereur, et il avait conclu que les deux puissances étaient distinctes, que le pape dominait dans les affaires spirituelles et l'Empereur dans les affaires temporelles.

D'après François de Vitoria, l'Empereur n'est pas le seigneur de la terre, "*Imperator non est dominus orbis.*" Il démontre sa proposition au moyen d'arguments de droit et de fait; il rappelle que l'Empire romain fut divisé en empire d'Orient et empire d'Occident et que

jamais les empereurs d'Allemagne n'ont élevé la prétention d'être les maîtres de la Grèce, tandis que le Concile de Florence a reconnu Jean Paléologue comme souverain légitime. "Le patrimoine de l'Eglise," écrit-il, "n'est pas soumis à l'Empereur; le royaume d'Espagne et le royaume de France ne sont pas non plus sous sa domination, quoique la glose dise que cette indépendance est de fait et non de droit; des docteurs concèdent même que des cités autrefois sujettes à l'Empire ont pu se soustraire à sa domination, en vertu de la coutume, ce qui ne serait pas possible, si leur sujétion était de droit divin."

III.

Il nous faut retourner d'un peu d'années en arrière, pour raconter l'incident auquel nous avons fait allusion déjà et que des lettres d'Erasme et de Vivès ont fait connaître. Il s'agit notamment du rôle que remplit François de Vitoria quand le grand humaniste fut violemment pris à partie en Espagne.

Erasme avait rendu hommage à la pureté des mœurs de Luther dans une lettre adressée au cardinal Wolsey en 1518; dans une lettre écrite au recteur de l'Université d'Erfurt, il avait admis l'utilité et la beauté du but poursuivi par le moine allemand. Le 28 mars, 1519, Luther le premier entra en correspondance avec le célèbre savant; il lui témoigna son respect et sa reconnaissance pour les services rendus aux belles-lettres et à l'affranchissement de la pensée. Erasme répondit par un mélange d'approbation et de conseils. Mais bientôt les événements prirent une allure violente et Erasme, sceptique quelque peu, pacifique d'ailleurs et ennemi de tout excès, ne voulut point suivre le fougueux rebelle, ni même passer sous silence une de ses doctrines dans laquelle il voyait un danger pour l'esprit humain.¹ Au mois de septembre, 1524, il écrivit le livre, *De libero arbitrio*; Luther riposta en 1525 par le traité, *De servo arbitrio*, et Erasme écrivit l'*Hyperaspistes diatribe ad servum arbitrium*. "La rupture," dit un écrivain, "était désormais irréparable. Erasme resta jusqu'à sa mort l'ennemi de la Réforme et ne cessa d'écrire contre elle; grâce à son influence puissante, grâce à ses nombreuses relations, tous les humanistes suivirent son exemple. . . . Si Erasme était devenu l'ennemi acharné de Luther, celui-ci ne le ménagera pas davantage. Il ne désarma pas même devant la mort."²

¹E. S. MARSEILLE, *Erasme et Luther: Leur discussion sur le libre arbitre et la grâce* (Montauban, 1897), p. 14 et suivantes.

²*Ibid.*, p. 35.

Les catholiques rangèrent Erasme parmi les plus vaillants défenseurs de la foi et le pape Clément VII le protégea. Néanmoins il avait des ennemis acharnés qui, en plusieurs pays, cherchèrent à soulever contre lui les autorités ecclésiastiques. Au mois d'avril, 1524, Noël Beda, docteur en théologie, ancien principal du collège de Montaigu, devenu syndic de la faculté, dénonça à la Sorbonne des propositions qu'il avait extraites des œuvres du savant écrivain et demanda leur condamnation. L'orage fut long et d'une grande violence. En Espagne, également, la tempête éclata. Erasme comptait dans ce pays beaucoup d'amis, plus peut-être que dans aucun autre pays de la chrétienté.¹ Mais il avait aussi des ennemis. En 1526, une campagne de dénonciation fut dirigée contre lui par des moines espagnols qui l'accusèrent d'attaquer la sainte Trinité, la divinité du Christ et la divinité du Saint Esprit.² Il était obligé de se défendre. Les moines, les Franciscains surtout, étaient animés à l'égard du grand homme de sentiments qui confinaient à la haine.

La correspondance imprimée d'Erasme renferme une lettre importante au sujet de ces faits. Elle est adressée "*theologo cuidam Hispano Sorbonico*," "à un théologien espagnol de la Sorbonne." Le texte résout complètement la question de savoir quel était le destinataire. En effet, l'humaniste mentionne que tout le mouvement a été dirigé par un de ses ennemis, Edward Lee, avec lequel il avait été en polémique violente plusieurs années auparavant. En 1526, Lee se trouvait en Espagne en qualité d'ambassadeur de Henri VIII et il avait instigué les adversaires d'Erasme qui étaient allés se plaindre jusque dans le palais de l'Empereur. Parmi les meneurs était le prieur du couvent dominicain de Burgos. Erasme le nomme et ajoute "*tuus, ut audio, germanus*," "votre frère, à ce que l'on me dit." Il n'y a point de place pour le doute. C'est à François de Vitoria qu'Erasme écrit. Du reste, l'ami dévoué de ce dernier, Juan Luis Vivès, s'était exprimé dans les termes les plus favorables au sujet de François de Vitoria, qu'il avait connu à Paris à l'époque où il étudiait lui-même au collège de Beauvais, sous la direction de Jean Dullaert, qui était originaire de Gand. Grâce à Juan Vergara, le secrétaire de l'archevêque de Tolède, Alfonso Fonseca, Vivès était tenu au courant de ce qui se tramait et aidait à préparer la défense. "Diego de Vitoria," écrivait-il à Erasme, "a un frère, François de Vitoria, également dominicain, théologien de Paris, homme de réelle réputation et en

¹MARCELINO MENENDEZ PELAYO, *Historia de los heterodoxos españoles* (Madrid, 1880), tome II, p. 61.

²*Ibid.*, p. 65 et suivantes.

lequel on a beaucoup de confiance; plus d'une fois, il vous défendit à Paris devant de nombreux théologiens; depuis son enfance, il s'occupe de belles-lettres; il vous admire et il vous adore. Il enseigne à Salamanque, où il occupe la chaire primaire, comme on l'appelle." Les moines essayaient de soulever les foules et de les pousser à la sédition; ils promettaient serment de n'écouter ni l'Empereur ni les évêques, disant qu'ils devaient obéir à Dieu plutôt qu'aux hommes.¹ Il fut nécessaire que, devant leurs clameurs et leurs sermons furibonds, l'autorité civile et l'autorité religieuse, dont presque tous les représentants, y compris l'Empereur et les archevêques de Tolède et de Séville, étaient favorables à Erasme, consentissent à promettre une enquête et à nommer une commission d'investigation.

Dans sa lettre au "théologien espagnol de la Sorbonne," c'est-à-dire, à François de Vitoria, Erasme avait demandé à celui-ci d'intervenir auprès de son frère, Diego, et aussi auprès de Noël Beda, qui au même moment lui suscitait à Paris des difficultés presque insurmontables.

En France, la Sorbonne condamna les propositions que Beda prétendait avoir extraites des ouvrages du grand humaniste, et, en décembre, 1527, elle rendit un jugement doctrinal en trente-deux articles. Il est vrai que pendant quatre années le gouvernement refusa de permettre que cette censure fût imprimée.²

En Espagne, la commission d'investigation se réunit à Valladolid; elle comprenait vingt-et-un théologiens, parmi lesquels était François de Vitoria. Les partisans d'Erasme étaient en grande majorité. Mais aucun jugement ne fut prononcé. La peste qui désolait alors le pays fit ajourner les travaux et ceux-ci ne furent pas repris. Il est vrai qu'un autre coup fut porté à ce célèbre écrivain. "Erasme," dit Llorente, "crut s'être tiré heureusement de cette affaire; il n'en fut rien, car le Conseil de la Suprême défendit de lire ses *Colloques*, son *Eloge de la Folie*, et sa *Paraphrase sur le Nouveau Testament*."³

Nous possédons sur François de Vitoria quelques renseignements intéressants, grâce à deux savants belges, qui le connurent personnellement, Nicolas Cleynaerts et Jean Vasée. Cleynaerts naquit à Diest, en 1493 ou 1494; il étudia à l'Université de Louvain, où il obtint, en 1519, l'autorisation d'enseigner publiquement ou en par-

¹H. DURAND DE LAUR, *Erasme, précurseur et initiateur de l'esprit moderne* (Paris, 1872), tome 1, p. 492.

²*Ibid.*, tome 1, p. 507.

³*Histoire critique de l'inquisition d'Espagne depuis l'époque de son établissement par Ferdinand V jusqu'au règne de Ferdinand VII, tirée des pièces originales des archives du Conseil de la Suprême et de celles des tribunaux subalternes du Saint Office*, par D. JEAN-ANTOINE LLORENTE, ancien secrétaire de l'Inquisition, traduit par ALFRED PELLIER (Paris, 1817), tome 1, p. 461.

ticulier le grec et l'hébreu. En 1531, Jean Vasée (Vasaeus), originaire de Bruges, suivait ses cours. En cette année le fils naturel de Christophe Colomb, Fernand Colomb, "le plus grand bibliophile de son temps, peut-être de tous les temps," comme le dit Henry Harrisse, cherchait des savants dont il voulait s'assurer la collaboration pour organiser la bibliothèque qu'il créait à Séville et qui, de son nom, s'appela plus tard la Colombine.¹ Celui-ci était fort riche; on évaluait ses revenus annuels à une somme qui ferait de nos jours plus de 300,000 francs et à ces revenus s'ajoutait le bénéfice provenant d'opérations commerciales. Il fit à Cleynaerts et à Vasée des offres que ceux-ci acceptèrent. Au mois d'octobre, 1531, Fernand quittait les Pays-Bas et se dirigeait vers l'Espagne en compagnie des deux Belges. A Salamanque, Cleynaerts et Vasée firent la connaissance de François de Vitoria, avec lequel ils restèrent en relations d'étroite amitié, comme le prouvent les passages de leurs écrits. On sait que Cleynaerts fut appelé à diriger en Portugal l'éducation du frère du roi Jean III, le prince Henri, qui était alors archevêque de Braga et qui monta plus tard le trône. Vasée devint bibliothécaire de Fernand Colomb; au bout de trois années, il se rendit à Salamanque, où il essaya de gagner sa vie en donnant des leçons; plus tard il fut appelé en Portugal. Il est l'auteur du *Chronicon rerum memorabilium Hispaniae*, dont le premier volume parut seul. Il mourut en 1552.

Dans ses lettres, Cleynaerts fait plusieurs fois mention de François de Vitoria avec lequel, du reste, il était en correspondance; il vante son érudition extraordinaire, il loue son admirable style latin, il engage Vasée à faire le plus grand cas des conseils que lui donne le professeur de Salamanque.²

Jean Vasée rendit à François de Vitoria, qui venait de mourir, un hommage ému dans son *Chronicon*. "S'il avait vécu," écrit-il, "que d'assistance il m'aurait apportée! Il avait une érudition incroyable, une lecture presque infinie, une mémoire prompte; il était comme un miracle de la nature."³ Dans un livre sur les *Adagia* d'Erasmus, le même auteur consacre ces lignes à la mémoire du maître de Salamanque: "L'Espagne entière n'avait personne d'aussi savant, d'aussi simple et, j'ose l'ajouter, d'aussi saint."

François de Vitoria mourut, le 12 août, 1546. Depuis deux années des douleurs rhumatismales l'affligeaient et les progrès du mal avaient

¹H. HARRISSE, *Excerpta Colombiana* (Paris, 1887), p. 25 et suivantes.

²NICOLAUS CLENARDUS, *Epistolarum libri duo* (Anvers, 1556).

³JOANNES VASAEUS, *Rerum Hispanicarum chronicon*, Chapitre vi: *Rerum Hispanicarum scriptores aliquot* (Francfort, 1579), tome I, p. 437 et suivantes.

été tels qu'il avait dû prendre en Juan Gil Fernandez de Nava un remplaçant pour ses leçons de théologie. L'université, l'Ordre des dominicains, la ville entière lui firent d'émouvantes funérailles, au milieu de la douleur générale.

IV.

Les leçons de François de Vitoria nous sont parvenues en partie. Après sa mort d'anciens élèves réunirent les leçons solennelles, les *relectiones* que le professeur avait prononcées, et les firent imprimer. La première édition ne fut point très correcte; les éditions suivantes laissaient également à désirer; mais les fautes étaient, somme toute, des fautes d'impression que le lecteur peut corriger. Une réflexion s'impose à l'esprit du lecteur, qui a plus d'importance; elle concerne le fond même et elle a trait au point de savoir si les leçons qui nous ont été transmises sont tout-à-fait complètes. Si une réponse décisive ne peut être donnée, il est certain cependant que les dissertations que nous avons sous les yeux suffisent pour donner une idée des opinions du maître et, même en ce qui concerne la forme, elles nous permettent d'apprécier l'élégance, la clarté, le charme de la langue latine dont se servait le professeur de Salamanque.

Le titre même, *Relectiones theologicae*, montre que la théologie était à l'avant-plan; toutefois des sujets sont traités qui appartiennent à la politique et au droit des gens. L'auteur s'est chargé d'expliquer comment il a envisagé sa tâche quand il s'est occupé de problèmes juridiques. Il soutient que l'office et la charge du théologien s'étendent à ce point que nul argument, nulle controverse ne paraissent étrangers à la profession et à l'institution de la théologie. En ce qui concerne spécialement les questions concernant les droits des populations barbares, il affirme qu'elles peuvent encore être discutées parce qu'elles ne sont nullement résolues. A l'objection que des hommes sages et prudents ont été chargés de l'administration, il répond que le doute est permis, puisqu'on entend parler de massacres et de spoliations et qu'il est licite de se demander si tout s'est passé sans injustice. "Or," écrit-il, "la solution en ces matières n'appartient pas aux jurisconsultes ou du moins elle n'appartient pas à eux seuls. Comme ces barbares ne sont pas des sujets en vertu du droit humain, les affaires qui les concernent doivent être examinées au point de vue, non des lois humaines, mais des lois divines, dans lesquelles les jurisconsultes ne sont pas versés suffisamment pour être à même de trancher les difficultés. Il s'agit du for de la conscience qui relève des

prêtres, c'est-à-dire, de l'Eglise." "*Et cum agatur de foro conscientiae, hoc spectat ad sacerdotes, id est, ad Ecclesiam, diffinire.*"

La première édition des *Relectiones theologicae* parut à Lyon, en 1557, chez Jacques Boyer; en 1565, une deuxième édition fut imprimée à Salamanque par Juan de Canova; le titre porte *Relectiones undecim*; d'autres éditions portent *Relectiones theologicae tredecim partibus divisae*; la différence provient de ce que deux des leçons sont parfois partagées entre *prior* et *posterior*. L'édition de 1565 a fait l'objet des soins du Père Alonso Muñoz, de l'Ordre de Saint Dominique. Elle est dédiée à Don Carlos. Il est dit dans le titre que l'édition "est corrigée des prodigieuses et innombrables fautes dont l'édition première faite par Jacques Boyer était remplie." Dans le privilège se trouve rapportée la plainte exprimée par Alonso Muñoz au sujet des erreurs de cette même édition; ce dernier écrit qu'il a constaté ces erreurs quand il a aidé Dominique Soto dans la correction de son livre des *Sententiae*. Il n'est pas inutile d'ajouter qu'aux exemplaires de l'édition de Muñoz, le licencié Mercado, censeur des livres à la cour du roi, a annexé quatre pages d'*Errata* avec leurs corrections. En 1580, une édition correcte fut imprimée à Ingolstadt. En 1587, une quatrième édition parut à Lyon; elle était l'œuvre d'un théologien qui a gardé l'anonymité. Elle est précédée d'un éloge de François de Vitoria, où il est rappelé que Melchior Cano et Dominique Soto furent des disciples de ce maître et que les rois d'Espagne soumirent à celui-ci des cas de conscience et des affaires concernant le Nouveau Monde et la répudiation de Catherine d'Aragon par Henri VIII. L'édition était publiée aux frais de Pierre Landry; aussi quelques vers latins écrits en l'honneur de celui-ci figurent-ils à la suite d'autres vers destinés à honorer l'auteur de l'ouvrage et à donner une idée de l'ouvrage lui-même.

On peut citer encore l'édition d'Anvers de 1604 et l'édition de Venise de 1626 dont un exemplaire a servi à Henry Hallam en vue des pages intéressantes qu'il a rédigées concernant François de Vitoria dans son *Introduction to the literature of Europe in the fifteenth, sixteenth and seventeenth centuries*. On indique aussi une édition de Salamanque de 1680 et une édition de Cologne de 1696, dirigée celle-ci par Johann Georg Simon, professeur en droit à Iéna et plus tard à Halle. On mentionne aussi une édition de Madrid de 1765. Enfin il convient de dire que le Marquis de Olivart qui a rendu tant de services à la science du droit des gens a publié les deux leçons sur les Indiens et sur les droits de la guerre.

D'autres ouvrages de l'auteur parurent après sa mort. Ce sont la *Summa sacramentorum Ecclesiae*, imprimée à Valladolid en 1561, et un manuel des confesseurs en langue espagnole, *Confesionario*, paru à Salamanque en 1562. Nicolas Antonio cite comme manuscrits: *Commentaria in universam Summam Theologiae Sancti Thomae* et *Commentaria in IV libros Sententiarum*.

Les leçons dont nous avons à nous occuper spécialement sont intitulées dans l'édition de 1565: *De Indis recenter inventis relectio prior* et *De Indis, sive de jure belli Hispanorum in barbaros, relectio posterior*. Elles sont consacrées à l'examen des titres que les Espagnols peuvent invoquer pour justifier leur domination dans le Nouveau Monde. Elles ont été prononcées en 1532 et elles sont les premiers exposés complets de la question. Sans doute le problème avait déjà été porté devant l'opinion scientifique. Il est permis de mentionner Jean Lopez de Palacios Rubios qui prit la défense des Indiens opprimés, dans une consultation qui avait été rédigée à la demande du roi Ferdinand. "Le roi," écrivait-il, "a ajouté à sa puissance les îles de l'Océan que le vulgaire désigne sous le nom des Indes et il a appelé à la vérité de l'Evangile les hommes et les peuples incultes qui y habitent. La question s'est ainsi posée de savoir quels droits possède le souverain. De source digne de foi, l'auteur a appris que les indigènes des contrées que vient de découvrir Christophe Colomb sont des hommes doués de raison, doux, pacifiques, et capables de s'élever jusqu'à notre religion. Ils n'ont rien en propre, mais ils cultivent en commun certaines terres. Ils sont adonnés à la polygamie qui entraîne la désorganisation des familles. Sont-ils libres? Oui, car Dieu a donné la liberté à tous les hommes; cependant ils doivent écouter ce que disent les prêtres chrétiens."¹

Déjà en 1494, la question des indigènes du Nouveau Monde avait été soumise par le gouvernement à une commission composée de théologiens et de canonistes qui se prononça en faveur de la thèse généreuse, et une lettre de la reine Isabelle, en date du 10 février, 1495, prouva que les arguments invoqués avaient convaincu la souveraine. Malheureusement les autorités de la métropole cédèrent devant les réclamations et les exigences des colons qu'animait l'esprit de lucre. L'esclavage existait en Espagne. Il ne se recrutait pas seulement parmi les prisonniers faits dans les guerres entreprises dans le pays même contre les Maures; dès les dernières années du XIV^{ème} siècle,

¹VICENTE DE LA FUENTE, *Palacios Rubios: Su importancia jurídica, política y literaria*. Dans *Revista general de legislación y jurisprudencia*, tome XXXVI (Madrid, 1870), p. 242.

il y avait des marchés à Séville et à Cadix où étaient exposés en vente les habitants des Canaries, les Guanches comme on les appelait; au début du XV^{ème} siècle des esclaves nègres avaient été introduits en Castille, à la suite des expéditions faites par les Portugais. Les Espagnols étaient familiarisés avec l'esclavage; il n'est pas étonnant que l'abominable pensée de réduire en esclavage les indigènes du Nouveau Monde ait été conçue et il n'est pas étonnant non plus que des nègres aient été transportés vers les Indes Occidentales. "Avant que l'on songeât à l'organisation de la traite," écrit Georges Scelle, "et dès les premiers temps de la conquête, on porta certainement des nègres d'Espagne en Amérique. On sait qu'à la fin du XV^{ème} siècle, en Portugal, en Espagne, plus spécialement en Andalousie, les esclaves étaient nombreux: esclaves blancs, maures, juifs, des noirs surtout. Comment les Espagnols . . . n'en auraient-ils point embarqué avec eux? Ils en portèrent non seulement de Portugal et d'Espagne, mais des îles de la Méditerranée, des Baléares, de Sardaigne où ils abondaient, de Madère et des Canaries, depuis peu conquises, et où touchaient les vaisseaux qui s'en allaient vers l'Occident."¹ Les répartitions et les commanderies furent établies sous lesquelles les Indiens étaient réduits en servitude, tandis que certaines peuplades étaient condamnées à l'esclavage. "L'usage," écrit Alexandre de Humboldt, "de distribuer les indigènes parmi les Espagnols pour faciliter le travail des mines, commença en 1496. . . . Par la Provision du 20 décembre, 1503, le gouvernement central autorisa la contrainte au travail, la taxation arbitraire du salaire, le droit de transporter les indigènes dans les parties les plus éloignées de l'île et de les tenir pendant six, puis huit mois, séparés de leur famille. C'était la *demora*. Il y eut aussi la *mita*, l'exploitation des mines."² Le 20 décembre, 1503, fut signé un horrible décret. "Il permettait," écrit l'illustre savant que nous venons de citer, "de réduire en captivité et de vendre les Caribes des îles et de la terre ferme. . . . On discuta longuement sur les nuances qui distinguent les variétés de l'espèce humaine; quelles populations étaient caribes ou cannibales, condamnées à l'extermination ou à l'esclavage, quelles étaient *guatiaos* ou *Indiens de paix*, anciens amis des Espagnols. En 1511, il fut statué que les Caribes seraient marqués d'un fer chaud, usage barbare qu'au commencement de ce siècle j'ai encore trouvé assez répandu parmi la population noire des Antilles."³

¹GEORGES SCELLE, *La traite négrière aux Indes de Castille; contrats et traités d'assiento* (Préface de M. A. PILLET) (Paris, 1906), tome I, p. 121.

²ALEXANDRE DE HUMBOLDT, *Examen critique de l'histoire de la géographie du nouveau continent et des progrès de l'astronomie nautique aux X^{ème} et XV^{ème} siècles*, tome III (Paris, 1837), p. 281.

³*Ibid.*, tome III (Paris, 1837), p. 293-294.

Des Hiéronymites et des Franciscains avaient été les premiers missionnaires qui s'étaient rendus dans le Nouveau Monde. Cajetan était devenu maître général de l'Ordre des dominicains en 1508; il prit à cœur l'évangélisation; mais le gouvernement ne permit le départ de missionnaires appartenant à cet Ordre qu'en septembre, 1510: trois frères partirent ainsi, et tous trois étaient du couvent de Saint-Etienne à Salamanque. Parmi eux était Antoine de Montesino, qui rentra en Europe en 1511 et défendit les malheureuses populations devant une commission que Ferdinand réunit à Burgos en 1511.

En 1519, un autre solennel débat avait lieu en présence du jeune roi Charles assisté de Diego Colomb, vice-roi des Indes. Barthélemy de las Casas se fit devant le monarque l'avocat dévoué des opprimés et inaugura ainsi la longue série des services dévoués qui lui valurent le nom glorieux de défenseur de la liberté des indigènes d'Amérique.

Dans ses *Relectiones* François de Vitoria repousse toutes les théories basées sur la prétendue supériorité des chrétiens, sur leur droit de châtier l'idolâtrie, sur la mission qui leur aurait été attribuée de propager la vraie religion.

La question de savoir si les infidèles avaient le *dominium* avait été discutée par les auteurs. Dans la *Relectio de potestate civili* François de Vitoria cite pour la combattre l'opinion professée par Richard Fitzralph, archevêque d'Armagh, d'où son nom *Armachanus*, qui mourut vers 1360. Il rappelle que ce dernier, dans son livre, *De paupertate Christi*, enseigne que l'infidélité et même le péché mortel empêchent l'existence de la puissance, du droit de domination, de la juridiction, et que la grâce est le titre et le fondement de tout pouvoir. Dans la *Relectio de Indis*, il cite de nouveau l'opinion de l'archevêque d'Armagh; il mentionne l'opinion semblable de Wycliffe; il rappelle que telle aussi était avant ces deux écrivains l'erreur des Pauvres de Lyon ou des Vaudois; il ajoute que le Concile de Constance a condamné la proposition formulée en ces termes par Wycliffe: "*Nullus est dominus civilis, dum est in peccato mortali.*"

François de Vitoria pose la question du titre de la découverte, *inventio*, le seul titre, dit-il, qui ait été invoqué au début des entreprises dans le Nouveau Monde, le seul titre en vertu duquel Colomb le Génois navigua. Seulement il fait remarquer que ce titre n'est suffisant que lorsqu'il s'agit de régions inhabitées et que, dans le cas actuel, les barbares étaient véritablement les maîtres de ce pays, au point de vue public et au point de vue privé. "En vertu du droit des gens," dit-il, "ce qui n'est dans les biens de personne, devient la propriété de l'occu-

pant, seulement les biens dont nous parlons étaient sous un maître et par conséquent ils ne tombent pas sous le titre de l'invention." Il n'est pas sans intérêt de noter que le titre de la découverte fut admis par nombre d'auteurs espagnols et portugais et que c'est pour en contester la validité quand il s'agit de régions nouvellement découvertes que Grotius exigea en plus de la découverte, l'occupation. "*Invenire enim*," écrivait-il dans le *Mare liberum*, chapitre 2 et chapitre 5, "*non est oculis usurpare, sed apprehendere, ut Gordiani epistola ostenditur: unde grammatici invenire et occupare pro verbis ponunt idem significantibus*." Acceptant la pensée de François de Vitoria, il écrit: "*Invenire nihil juris tribuit, nisi in ea quae ante inventionem nullius fuerunt*." Il ajoute: "*Occupatio in mobilibus est apprehensio, in immobilibus instructio aut limitatio*."

Le professeur de Salamanque repousse l'argument d'après lequel les barbares ont l'obligation d'accepter la foi chrétienne. Il soutient qu'ils ne sont nullement tenus de croire, dès que mention est seulement faite de la vérité de la religion du Christ; selon lui, s'ils ont refusé de devenir chrétiens après que la proposition leur en a été simplement faite, il n'y a nulle raison pour les Espagnols de leur déclarer et de leur faire la guerre. Pour qu'il y ait juste cause de guerre, il faut que ceux qui sont attaqués aient commis une faute justifiant l'attaque dont ils sont l'objet: c'est l'enseignement de Saint Augustin et c'est l'opinion commune, *sententia communis*, non seulement des théologiens, mais aussi des jurisconsultes. Mais si l'on demande aux barbares d'écouter les hommes qui leur parleront de la religion, ils ne peuvent refuser, sans commettre un péché mortel, ni négliger d'examiner les arguments probables et raisonnables qui leur sont soumis. La question se pose ainsi de savoir si la foi chrétienne a été proposée et annoncée aux indigènes du Nouveau Monde de façon qu'ils soient obligés de la reconnaître et cette question François de Vitoria ne veut pas la résoudre affirmativement: "Il n'y a eu ni miracles ni manifestations," dit-il, "qui aient dû les convaincre; il n'y a pas eu même d'exemples d'une vie religieuse; au contraire, les Espagnols se sont rendus coupables de nombreux scandales, crimes et impiétés."

Le grand théologien examine ensuite un sujet délicat, que traitèrent d'ailleurs presque tous les théologiens et jurisconsultes qui s'occupèrent de la domination des Espagnols dans le Nouveau Monde: les vices et les mœurs infâmes et les pratiques sanguinaires peuvent-ils justifier la guerre faite à ceux qui s'en rendent coupables? Il enseigne qu'il n'a point là de cause légitime pour les Espagnols d'établir leur domination par la force des armes.

Nous pouvons observer d'ailleurs que les reproches formulés contre les Indiens étaient fondés. Un passage de Bernal Diaz del Castillo, un des compagnons de Fernand Cortez dans son expédition du Mexique offre quelque éclaircissement. Diaz reproduit le langage tenu par son chef à des caciques qui implorent sa protection. Cortès, écrit-il, leur dit qu'ils devaient abandonner les idoles et ne plus leur sacrifier. "Il ajouta qu'ils devaient se rendre purs des vices honteux dont leurs jeunes hommes donnaient continuellement le scandale; que d'ailleurs on sacrifiait chaque jour sous nos yeux quatre et cinq Indiens dont on offrait les cœurs aux idoles, lançant le sang sur les murailles, coupant les jambes, les cuisses et les bras pour les manger comme viande qui sortirait de nos boucheries (je crois même qu'on les vendait en détail dans leurs marchés)." Il finit par leur promettre que "pourvu qu'ils abandonnassent leurs mauvaises habitudes et ces usages, non-seulement nous serions leurs alliés, mais nous ferions en sorte de les rendre seigneurs d'autres provinces."¹

Un historien confirme ce qui a été dit au sujet du degré de civilisation des peuples du Nouveau Monde. "The Mexicans and Peruvians," écrit-il, "were barbarians: that is, while possessing a material basis sufficient to support a low degree of civilisation, their habits of thought and life remained essentially savage. The Mexican warriors, the most advanced class found in America, were cannibals; in both Mexico and Peru regular human sacrifices formed an essential part of the scheme of life. Cannibalism was unknown in Peru, though it existed among the Indians of the forest districts to the eastward of the Andes (the *montaña*) and to the northward of Los Pastos, the northern limit of the Inca dominion: this may reasonably be ascribed to the fact that the Peruvians possessed large domesticated food-animals, which were wanting in Mexico. In most other respects the Peruvians were at a lower level than the Mexicans."² "In Mexico," ajoute le même auteur, "there existed a rudimentary commerce. . . . Slavery, an important element in the earliest advancement, had come into existence. . . . In Peru, so far as appears, commerce was unknown . . . nor was there any division of labour, except that between the warrior and the cultivator."

L'auteur que nous venons de citer donne d'instructives indications. "The 'weak males,'" dit-il, "are a noticeable class in ancient society, and abounded in the New World. Incapable of getting their living by the chase, the weak males would in the earliest savagery

¹*Histoire véridique de la conquête de la Nouvelle-Espagne*, écrite par le capitaine BERNAL DIAZ DEL CASTILLO, l'un des conquistadores; traduction par D. JOURDANET (Paris, 1877), p. 121.

²EDWARD JOHN PAYNE, *History of the New World called America*, tome 1 (Oxford, 1892), preface, p. vii.

probably be killed and eaten, or, in the alternative, left to perish. In more advanced savagery they are allowed to survive, on the terms of systematically sharing the tasks of the women, which include the quest of wild vegetable food. From this the transition is easy to their becoming assistants, when the stage of partial agriculture has been reached, in the cultivation of the soil. Males of this class, wearing female attire, and performing the lowest functions imposed on the female sex, were commonly found, in the latest times, in the most advanced communities of America: those of the Mexican *pueblos* shocked the moral sense of the *conquistadores* scarcely less than did the hideous idols, the human sacrifices, and the cannibal feasts. Originally the weak males are of necessity celibates. As agriculture advances, and labour is more and more in request, some of them, it would seem, are allowed to become the parents of others; their progeny, weak in physique, are well adapted to form the nucleus of the lowest group in the industrial class, the slaves. Tribes which have been largely depleted of their women, in the manner above indicated, must necessarily rely more and more on their weak males for purposes of labour; their vigour will consequently diminish, and they will be ready for subjugation by stronger ones.”¹

L'illustre théologien admet cependant qu'il puisse exister des titres légitimes en faveur de la domination espagnole sur les Indiens. “Le premier titre,” dit-il, “peut s'appeler le titre de la société naturelle et de la communication naturelle.” “*Primus titulus potest vocari naturalis societatis et communicationis.*” En vertu de ce titre les Espagnols peuvent voyager dans ces régions et y séjourner, à la condition toutefois de ne pas nuire aux habitants, et il n'est pas permis de les empêcher de voyager et de séjourner. Le savant auteur invoque le droit des gens, le *jus gentium*. C'est ici que se placent les mots, “*Quod naturalis ratio inter omnes gentes constituit, vocatur jus gentium.*” Le passage se trouve au début de la troisième section de la dissertation concernant les aborigènes du Nouveau Monde. On a prétendu que l'illustre professeur s'était borné à reproduire le passage connu que les *Institutes* de Justinien ont emprunté à Gaius et que, citant de mémoire, il avait remplacé le mot *homines* par le mot *gentes*, qui dans la latinité vulgaire signifiait fréquemment “personnes,” “hommes,” “gens.” Il suffit de lire les développements que François de Vitoria donne à sa pensée pour se convaincre qu'il s'agit de *gentes* au sens de “nations”: ce sont des peuples qu'il place les uns à côté des autres dans son argumentation; c'est le mot *nationes* qu'il emploie après celui de *gentes*; c'est enfin le

¹EDWARD JOHN PAYNE, *ouvrage cité*, tome II (Oxford, 1899), p. 17.

mot *gentes* qu'il met en face du mot *homines*. Les exemples qu'il donne pour expliquer sa pensée sont relatifs aux rapports des nations et à leur entrecours. "Chez toutes les nations," écrit-il, "on considère comme inhumain de ne pas accueillir des hôtes et des étrangers, à moins qu'un motif spécial ne s'y oppose; on envisage comme humain et conforme au devoir de bien se conduire à l'égard des hôtes; or cela ne serait pas si les étrangers agissaient mal en se rendant au milieu de nations étrangères." Il ajoute qu'il ne serait pas permis aux Français de défendre aux Espagnols de voyager en France et même d'y habiter et que les Espagnols ne pourraient non plus repousser les Français. Faut-il faire une observation? C'est qu'il y a quelque chose de puéril à contester à un homme de génie, comme fut François de Vitoria, l'emploi d'une terminologie qui rendait si bien sa notion d'un ordre juridique s'étendant sur tout le globe et dont les communautés politiques faisaient seules partie. Dans le troisième livre de *Pantagruel*, paru en 1545, Rabelais traduit l'expression *jus gentium* par "droit des peuples."

L'auteur des *Relectiones theologicae* fait valoir le droit que possèdent les Espagnols de faire le commerce dans le Nouveau Monde, d'y importer par exemple les marchandises dont les indigènes ont besoin et d'exporter soit l'or, soit l'argent, soit les autres choses qui y abondent. "Les princes barbares," dit-il, "ne peuvent empêcher leurs sujets de faire le commerce avec l'Espagne et les rois d'Espagne, de leur côté, ne peuvent interdire aux Espagnols de faire le commerce avec les Indiens." Il invoque la maxime que l'on ne doit pas faire à autrui ce qu'on ne veut pas supporter soi-même. Il fait valoir que les Espagnols ne pourraient empêcher les Français de faire le commerce en Espagne. Il montre que la nature même a établi une parenté entre tous les hommes, "*inter omnes homines cognatio*." "L'homme," écrit-il, "n'est pas, comme le dit Ovide, un loup pour l'homme, il est un homme." "*Non enim homini homo lupus est, ut ait Ovidius, sed homo*." Il ajoute que si des choses sont communes, les barbares ne peuvent empêcher les Espagnols d'en profiter; il cite l'or des mines ou des rivières, les perles de la mer ou des fleuves. Il admet qu'une sanction efficace garantisse l'exercice du commerce. Aussi, si les barbares s'opposent à ce que les Espagnols usent de leur droit, ceux-ci doivent d'abord recourir au raisonnement et démontrer qu'ils ne viennent pas dans l'intention de nuire. Quand semblable méthode ne suffit pas et quand les Indiens recourent à la force, il est permis aux Espagnols de se défendre, de repousser la violence, de construire des

fortifications, de faire la guerre, en usant toutefois de modération et en infligeant le moins de dommage possible. Si les barbares persévèrent néanmoins dans leur hostilité et s'ils essaient d'amener la perte des Espagnols, ceux-ci peuvent user de tous les droits de la guerre, dépouiller leurs ennemis de leurs biens, les réduire en captivité et déposer leurs chefs. Ici aussi la modération et la mesure s'imposent; comme le disent les docteurs en traitant de la guerre, le prince qui fait une guerre juste est par là même le juge des ennemis et peut les punir conformément au droit et les condamner en proportion de leurs injures.

François de Vitoria mentionne quelques cas où se justifierait l'intervention par les armes. Ainsi les chefs indiens ne pourront pas persécuter leurs sujets convertis au christianisme ni vouloir les ramener à l'irréligion et les mêmes chefs ne pourraient exercer la tyrannie ni établir des lois tyranniques sans donner aux Espagnols le droit de mettre fin à ces abus. Il prévoit le cas où des indigènes se soumettraient volontairement au roi d'Espagne et le proclameraient leur prince; il ne faut même point, selon lui, que semblable décision soit prise à l'unanimité; la majorité suffit. Un autre titre légitime serait l'assistance apportée à des alliés; c'est ainsi que les Romains ont conquis le monde en faisant surtout la guerre pour secourir des peuples qui avaient contracté des liens d'amitié avec eux.

Le savant auteur traite plus spécialement du droit de la guerre dans la *De Indis, sive de jure belli Hispanorum in barbaros, relectio posterior*. Il examine les quatre questions suivantes: Est-il permis aux chrétiens de faire la guerre? Quelle autorité peut déclarer et faire la guerre? Quelles sont les causes d'une juste guerre? Que peut-on faire à l'ennemi dans une juste guerre?

Il cite des textes du Nouveau Testament qui semblent condamner le recours à la force; mais il enseigne que ce sont des conseils et non pas des ordres; aussi repousse-t-il la doctrine de Luther d'après laquelle les chrétiens ne peuvent pas même prendre les armes contre les Turcs parce que, si ceux-ci envahissent la chrétienté, c'est en vertu de la volonté divine. Avec Saint Augustin, il enseigne que les chrétiens peuvent s'engager dans le service militaire et faire la guerre. Il cite plusieurs motifs qui rendent la guerre licite. Ainsi la défense contre l'ennemi; le recours aux armes contre les malfaiteurs et les séditeux; la poursuite des ennemis quand leur attaque a été repoussée; la nécessité de défendre la sécurité publique; la protection de la tranquillité générale contre les tyrans et contre les oppresseurs.

Concernant l'autorité à laquelle est réservé le droit de déclarer et de faire la guerre, l'auteur des *Relectiones theologiae* observe que dans la guerre défensive, tout homme, même le particulier, peut repousser la force par la force pour protéger sa personne et ses biens et il mentionne en passant l'opinion d'auteurs qui enseignent que le particulier ne peut pas tuer son adversaire si la fuite lui permet d'échapper au péril menaçant. Il précise sa pensée en montrant qu'il y a une différence entre la communauté politique, *Respublica*, et le simple particulier: ce dernier peut défendre sa personne et ses biens, mais il ne peut venger l'injure ni reprendre ses biens quand ils lui sont enlevés depuis quelque temps, "*intervallo temporis*"; la *Respublica* possède l'autorité de se défendre, elle et les siens, et de plus de venger les injures. Il reconnaît, sous ce rapport, au prince une autorité pareille à celle de la république: "Le prince," dit-il, "est issu de l'élection à laquelle la *Respublica* a procédé." Il examinait de plus près les notions de *Respublica* et de prince. "La république proprement dite," écrit-il, "est une communauté parfaite, c'est-à-dire, une communauté qui constitue par elle-même un tout, qui n'est pas en d'autres termes une partie d'une autre communauté, mais qui possède ses lois propres, son conseil propre, ses magistrats propres." Comme exemples, il cite la Castille et l'Aragon, et Venise. Il ajoute qu'il importe peu que plusieurs principautés et républiques parfaites sont sous le même prince; en pareil cas, d'ailleurs, chacune de ces principautés et de ces républiques parfaites a le droit de faire la guerre, droit sans lequel elles seraient incomplètes et par conséquent imparfaites. Toutefois, comme le droit des gens et le droit humain ont ici grande influence, la coutume peut donner la faculté et l'autorité de faire la guerre, même quand la *Respublica* n'est point parfaite. La nécessité elle-même peut conférer le droit de faire la guerre; tel serait le cas si, dans un royaume, une ville attaquait une autre ville, ou si un noble attaquait un noble, sans que le roi intervînt pour maintenir l'ordre.

François de Vitoria énumère quelques causes qui ne pourraient pas justifier le recours aux armes. Il rappelle que la diversité de religions ne permet pas de faire la guerre; il enseigne que le désir d'agrandir le royaume, pas davantage que la gloire ou l'intérêt du prince ne peuvent autoriser les hostilités. "Le roi légitime," dit-il, "diffère du tyran en ce que le tyran organise le gouvernement selon son profit, tandis que le roi a seulement en vue le bien public."

La conclusion est qu'il n'y a qu'une seule cause juste de faire la guerre; c'est l'injure subie. Toute espèce d'injure ne suffit point:

il s'agit d'infliger des maux graves et atroces, comme la mort, l'incendie, les dévastations; aussi les injures légères ne sauraient justifier le recours aux armes.

"Que peut-on faire dans une guerre juste?" demande l'auteur. "Tout ce qui est nécessaire à la défense du bien public," répond-il. Il conclut qu'il est permis notamment de récupérer les choses perdues et leurs valeurs et d'occuper les biens des ennemis en vue de se dédommager; il montre le particulier s'adressant au juge et obtenant de lui non seulement la restitution des objets enlevés, mais les frais encourus et le dommage subi; or, le prince qui fait une guerre juste agit véritablement comme juge. Il est licite même d'aller au delà, pour préparer la paix et la sécurité: on peut détruire les forteresses de l'ennemi, en construire d'autres sur son territoire. "Le but de la guerre," répète-t-il, "est la paix et la sécurité; à celui qui fait une guerre juste sont permises toutes choses nécessaires pour obtenir la paix et la sécurité qui compte parmi les biens de l'humanité. De même qu'il est permis de se défendre contre les ennemis de l'intérieur, contre les mauvais citoyens, de même il est permis de prendre des mesures contre les ennemis de l'extérieur, et le vainqueur peut ainsi exiger que le vaincu donne des otages et fasse remise de ses armes et de ses navires." L'auteur va plus loin; il admet que, la victoire obtenue, le vainqueur venge l'injure qui lui a été faite et qu'il punisse l'ennemi. Pour démontrer la vérité de sa proposition, il fait valoir que le prince possède non seulement sur ses sujets, mais encore sur les étrangers, l'autorité nécessaire pour les obliger de s'abstenir d'actes dommageables; il invoque le droit des gens et le droit naturel qui exigent qu'une autorité existe pour empêcher que les bons et les innocents ne soient impunément lésés. Il revient à plusieurs reprises sur une idée fréquemment développée au moyen âge et que Grotius dans le *De jure praedae commentarius* reprend en citant précisément les *Relectiones theologicae*, c'est qu'en commettant un délit, une communauté politique devient la sujette de l'autre communauté politique: le vainqueur devient le juge du vaincu et ainsi se justifient les mesures qui interviennent, car autrement on ne trouve pas de justification de la guerre, les communautés politiques n'ayant pas autrement autorité l'une sur l'autre.¹

Il faut se garder, dans la guerre, d'infliger des maux inutiles. Les innocents ne peuvent pas être frappés s'il est possible d'atteindre le

¹H. GROTIUS, *De jure praedae commentarius*, ex auctoris codice descripsit et vulgavit H. G. HAMAKER (La Haye, 1868), p. 29.

but de la guerre en les épargnant; les laboureurs ne peuvent être spoliés si la victoire peut s'obtenir sans leur infliger des pertes.

Il n'est pas licite de tuer les enfants et les innocents; mais est-il conforme au droit de les emmener en captivité? L'auteur admet que l'on emmène en captivité et en servitude les enfants et les femmes des Sarrasins; en ce qui concerne les chrétiens, il observe qu'il a été admis que les prisonniers de guerre ne deviennent pas esclaves et il conclut que si la captivité des enfants et des femmes est indispensable pour atteindre le but de la guerre, ceux-ci ne peuvent pas cependant être réduits en servitude, mais doivent être mis à rançon; sur ce point même, il recommande la modération.

"Au milieu de la bataille et dans l'attaque et dans la défense," dit François de Vitoria, "il est licite de tuer tous ceux qui se battent, mais, quand la victoire est obtenue et que le danger est passé, peut-on mettre à mort tous ceux qui ont porté les armes?" Il répond qu'il faut tenir compte de l'injure subie et du dommage éprouvé; on doit s'abstenir de toute atrocité et de toute inhumanité; il ajoute que si, à strictement parler, les prisonniers de guerre peuvent être mis à mort quand ils ont porté les armes, néanmoins la coutume et l'usage de la guerre, *consuetudo et usus belli*, sont tels qu'après la victoire les prisonniers de guerre ont la vie sauve, à moins qu'ils ne soient des transfuges.

L'auteur développe plusieurs propositions concernant le butin. Il se rallie à l'opinion de Silvestre de Prierio d'après lequel il convient de se contenter de ce qui donne suffisante et équitable réparation du dommage souffert. "Si," dit François de Vitoria, "les Français avaient détruit un bourg ou une localité sans importance, les Espagnols ne pourraient, même s'ils en avaient la force, ravager toute la France." Il se prononça contre le sac et l'incendie des villes; il admet que la nécessité puisse excuser le cruel procédé; mais il insiste sur les actes barbares que commettent en semblables occasions les sangui- naires guerres.

Une question surgit qui se rattache à ce que de nos jours on appelle l'occupation de guerre. Est-il licite d'occuper et garder aussi longtemps qu'il sera nécessaire un champ, des citadelles, une ville de l'ennemi? François de Vitoria répond affirmativement, mais exige que le but soit de se faire indemniser, de garantir la sécurité, de venger une injure ou de punir. Il veut que la nécessité et la raison de guerre, *necessitas et ratio belli*, justifient les mesures qui seront prises. Il exige la modération et il veut qu'à la fin de la guerre, le vainqueur garde uniquement ce qui compensera le dommage et les dépenses; il

reproduit l'idée qu'il a déjà émise: "*Superior judex potest commode mulctare authorem injuriae, tollendo scilicet ab eo civitatem, aut arcem. Ergo et princeps, qui laesus est, hoc poterit, quia jure belli factus est tanquam judex.*"

Il est une autre question, celle de savoir si un tribut peut être imposé aux vaincus. L'auteur la résout affirmativement. Le caractère licite est donné parce qu'il s'agit à la fois de dommages pour réparer un tort et d'un châtiment.

Autre question encore. Peut-on déposer les chefs ennemis et en établir d'autres; peut-on s'attribuer à soi-même le principat? Selon François de Vitoria, une maxime doit prévaloir ici, c'est que la peine ne doit jamais excéder en mesure l'injure qu'elle prétend venger.

François de Vitoria termine en formulant trois règles qui se résument en ces termes: En premier lieu, le prince ne peut pas chercher des occasions de guerre; il doit tâcher d'être en paix avec tous les hommes; s'il fait la guerre, ce doit être malgré lui. En deuxième lieu, quand la guerre a éclaté pour de justes causes, le belligérant ne peut pas avoir pour but de détruire le peuple ennemi; il peut seulement avoir en vue de défendre sa patrie de manière à aboutir à la paix et à la sécurité. En troisième lieu, la victoire obtenue, il faut user avec une modération chrétienne; le vainqueur doit se considérer comme un juge statuant au sujet de deux républiques dont l'une a subi un tort et dont l'autre a commis une injure et il doit rechercher comment satisfaction pourra être donnée, en infligeant à la communauté politique coupable le moins de mal possible, puisque chez les chrétiens la faute est généralement imputable aux princes eux-mêmes et qu'il serait inique de frapper les sujets qui combattent pour leurs princes et d'admettre la maxime formulée par le poète disant que les Grecs doivent subir les conséquences des folies de leurs rois:

Quidquid delirant reges, plectuntur Achivi.

V.

Dans une étude comme celle que nous avons entreprise, il faut nécessairement se borner aux questions les plus importantes et, par conséquent, négliger une série de particularités qui auraient cependant de l'intérêt. Nous avons mentionné la forme exquise que François de Vitoria a su donner à une œuvre que lui-même ne destinait pas à la publicité et qui de son vivant n'a pas été livrée à l'impression. Nous avons noté la clarté, la limpidité de la phrase latine. Nous

avons essayé de donner une idée du fond même de la doctrine et de la force du raisonnement. Nous n'insisterons pas sur le sentiment d'humanité et de charité qui prédomine dans toutes les pages. Un travail serait à faire sur les auteurs invoqués par l'illustre professeur et on pourrait ainsi constater combien ses études avaient été vastes, et quelles connaissances profondes il avait recueillies dans la littérature de son sujet.

Il est superflu de dire que l'Ancien et le Nouveau Testament, les Pères de l'Eglise, surtout Saint Augustin, sont invoqués et qu'Aristote est fréquemment cité. Parmi les théologiens et les canonistes dont l'opinion est mentionnée, figurent presque tous les auteurs connus du moyen âge: Gratien et son *Decretum*; Saint Thomas d'Aquin et sa *Summa totius theologiae*; les commentateurs du droit canonique; les commentateurs du droit romain, Bartole à leur tête; puis des écrivains généralement moins connus, comme Altissiodorensis, qui est Guillaume d'Auxerre, et cet autre docteur du XIII^{ème} siècle, Guillaume de Paris. Puis encore, Richard Fitzralph, Archevêque d'Armagh, John Wycliffe, William Occam, Jean de Jandun. Il faut mentionner aussi Juan de Torquemada. Un détail montre le soin, l'exactitude apportée par le professeur de Salamanque: il mentionne Juan de Torquemada, il rappelle que celui-ci a écrit en faveur de la papauté lorsque les évêques du Concile de Bâle, en 1431, ont affirmé la supériorité du concile œcuménique sur le pape. "*Contra quos,*" dit-il, "*Cardinal de Turrecremata fecit opusculum, quod vocavit 'De decreto irritante,' in quo contrariam sententiam contendebat ostendere. Sed illum librum ego invenire non potui.*" Parmi les auteurs cités, sont également Cajetan, que nous avons déjà mentionné, et Silvestre Mazzolini. François de Vitoria invoque principalement leur *Summa poenitentia*. Tous deux appartenaient à l'Ordre des Dominicains. Cajetan, comme nous l'avons dit, était né à Gaeta, d'où vient son nom. De 1508 à 1518, il fut maître général de l'Ordre des Dominicains. En 1517, Léon X le comprit dans sa fameuse création de trente-et-un cardinaux. Il mourut en 1534 et on lui décerna la réputation de plus grand théologien de son siècle. Silvestre Mazzolini, né à Prierio en Piémont, également Dominicain, avait été nommé par Léon X Maître du Sacré Palais. Il mourut en 1523. "Il était scolastique de race," a-t-on dit de lui, "et disciple rigide de Saint Thomas." François de Vitoria invoque aussi l'autorité de Saint Antonin, Archevêque de Florence de 1446 à 1459, connu surtout par son *Confessionale*.

Il serait intéressant aussi de rappeler les citations des *Relectiones theologicae*, que firent les grands auteurs du droit des gens. Les passer tous en revue serait une tâche lourde; mais quelques indications sont intéressantes.

Un grand hommage fut rendu à François de Vitoria quand de nombreuses pages de ses *Relectiones* furent reproduites dans les éditions des *Siete partidas* commentées par Grégoire Lopez de Tavar.

Un autre hommage, grand également, fut rendu par Alberico Gentili. L'illustre professeur d'Oxford n'a point ménagé ses éloges. Dans ses *De jure belli libri tres* il se complaît à invoquer les opinions du théologien espagnol, et à un moment donné, il écrit, "*testatur doctissimus a Victoria.*"

Nous avons mentionné que Grotius cite François de Vitoria dans les *Prolegomena* de son grand ouvrage, *De jure belli ac pacis libri tres*, paru en 1625; il l'a cité, comme nous l'avons d'ailleurs déjà vu, dans le *Mare liberum*, paru en 1609, et qui est en réalité un chapitre extrait d'un ouvrage composé en 1604, *De jure praedae commentarius*, qui demeura en manuscrit jusqu'en 1868 et fut alors imprimé pour la première fois. Dans ce dernier ouvrage, l'auteur mentionne souvent le savant professeur de Salamanque, notamment au sujet de la caractéristique de la communauté politique qui doit avoir son propre conseil et sa propre autorité.

En 1633, parut la *Monarchia Messiae* de Thomas Campanella; celui-ci mentionne l'opinion de François de Vitoria au sujet des droits du roi d'Espagne sur le Nouveau Monde; mais, ultramontain fougueux, il attribue la légitimité du titre au partage opéré par le pape entre les souverains d'Espagne et de Portugal, partage émanant, selon lui, du Seigneur et du juge. Pour Campanella, le pape est "le vicaire du Juge des vivants et des morts, des princes et des rois de la terre, du Roi des rois, du Chef de ceux qui dominent."

En 1635, fut imprimé le *Mare clausum* de John Selden. François de Vitoria y est cité; mais Selden combat son opinion.

Nous avons signalé l'influence exercée en Espagne même par François de Vitoria qui a renouvelé en quelque sorte l'enseignement de la théologie. Il fut en réalité le fondateur de cette illustre école de Salamanque, qui relevait, peut-on dire, de l'Ordre des Frères Prêcheurs et qui comptait les plus grands noms. "C'est vraiment chose extraordinaire," écrit un historien, "que cette réunion de Docteurs, dont on ne sait lequel admirer le plus. Jamais l'Espagne n'avait donné à

l'Ordre de Saint Dominique, et jamais elle ne donna depuis, autant de Maîtres incomparables."¹

L'influence de l'auteur des *Relectiones theologicae* se prolongea grâce surtout à ses disciples. Un homme de grande valeur lui a rendu justice, c'est Hermann Conring. Il était né à Norden, en Frise, en 1606, et il fut appelé à enseigner à l'Université de Helmstaedt; il mourut en 1681. Alphonse Rivier le juge en ces termes: "Savant universel, théologien, médecin, jurisconsulte, germaniste et romaniste, publiciste, diplomate, philosophe, grand esprit, petit caractère." Dans son *Examen rerum publicarum potiorum totius orbis*, Hermann Conring consacre une importante étude à l'Espagne. Il y parle notamment du développement que des écrivains de ce pays ont donné à la théologie scolastique et il observe que nul pays d'Europe n'a produit d'auteurs plus déliés. Il invoque le témoignage de Dominique Bannès, membre de l'Ordre des frères prêcheurs, professeur de théologie à Alcalá, à Valladolid et à Salamanque, qui attribue à François de Vitoria le mérite d'avoir suscité ce puissant mouvement. "Il avait puisé ses connaissances à Paris," disait Bannès, "mais il dépassa de loin ses maîtres." Conring rappelle que Bannès voit la cause des progrès réalisés par les Espagnols en théologie scolastique dans la gravité triste qui, selon lui, les distingue, et il se rallie à son opinion. Il fait de François de Vitoria un magnifique éloge. "Il existe de lui," écrit-il, "un ouvrage intitulé *Relectiones*, qui peut être d'une utilité extraordinaire, non seulement pour les théologiens, mais aussi pour les jurisconsultes, parce qu'il traite des choses morales avec le plus grand soin et la plus grande subtilité, au point que je le lis toujours avec admiration."²

Le professeur de Helmstaedt insiste sur ce que, le premier de tous, François de Vitoria a soulevé les problèmes moraux dans les questions juridiques; il ajoute que les Espagnols ont continué à étudier ainsi la théologie et la philosophie et qu'en vain on chercherait semblables travaux chez les Français, les Hollandais, et les Allemands, dont le génie n'est pas apte à pareille étude. "Souvent," ajoute-t-il, "je m'étonne que Hugo Grotius ait pu, à tel point, faire des progrès dans ce genre de travaux au delà de ce que les auteurs ont fait communément. Mais son génie était curieux. Toutefois, s'il excella dans la philosophie morale et produisit le livre incomparable, *De jure belli*

¹D. A. MORTIER, *ouvrage cité*, tome v (Paris, 1911), p. 385.

²HERMANN CONRING, *Opera* (Brunswick, 1730), tome IV: *Examen rerum publicarum potiorum totius orbis*, chapitre I (*De republica Hispanica*), p. 77.

ac pacis, il le dut à la lecture des jurisconsultes espagnols Ferdinand Vasquez et Diego Covarruvias qui se sont servis de l'ouvrage de leur maître, François de Vitoria. Fréquemment il les cite. La science juridique espagnole diffère beaucoup de la science juridique française. En France, on ne peut louer que Cujas, Hotman, Bauduin, etc., qui ont introduit dans leurs ouvrages d'agréables choses, mais en Espagne, le droit naturel est bien mieux cultivé; nulle part même, il n'est aussi heureusement enseigné. Et tout cela, l'Espagne le doit à François de Vitoria. La même considération s'applique à la philosophie; c'est la philosophie morale qu'on étudie le plus en ce pays. Que celui qui aspire à la connaissance la plus exacte de la philosophie morale se procure les auteurs espagnols. Les Allemands, en effet, et les Français ne sont rien quand on les compare aux Espagnols. C'est pour le motif que nous avons indiqué que les Espagnols ont cultivé avec bonheur la métaphysique; ici aussi il faut des dispositions à la gravité triste. En physique, ils sont de véritables enfants parce que l'étude de la physique est riante; aussi n'en cultivent-ils que la partie la plus triste, c'est-à-dire, la médecine, et en négligent-ils la partie agréable. Toujours pour la même raison, les études humanitaires languissent en Espagne. Dans un nombre considérable d'hommes, à peine peut-on louer l'un ou l'autre pour avoir cultivé les belles-lettres. Mariana et Barclay ont fait cette remarque. On cite parmi les théologiens le cicéronien Melchior Cano. Quand, à l'instigation des Jésuites, Philippe IV fonda une académie royale à Madrid, on ne trouva pas en Espagne, même parmi les Jésuites, un seul écrivain qui fût apte aux belles-lettres. Il n'y a dans ce pays qu'un historien moderne, Mariana."

Les auteurs du droit international du XIX^{ème} siècle n'ont pas manqué de faire l'éloge de François de Vitoria. Dans l'*History of the Law of Nations in Europe and America*, Henry Wheaton le mentionne d'une manière tout-à-fait approbative et il consacre plus de sept pages à faire l'analyse des deux *Relectiones* qui se rattachent au droit des gens. Un autre grand auteur, James Lorimer, philosophe du droit et jurisconsulte, a loué François de Vitoria en particulier et les auteurs espagnols du XVI^{ème} siècle en général. "From these few observations," écrit-il, "you will have no difficulty in perceiving the extreme injustice of the manner in which, down to our own time, it has been customary to speak of the scholastic jurists. Learned as Barbeyrac was, the few perfunctory sentences which he devotes to them in his

celebrated preface to Pufendorf—which he adopts in his preface to Grotius as serving for both works—are no exception. The fact is, that ever since the Reformation the prejudices of Protestants against Roman Catholics have been as vehement as to deprive them of the power of forming a dispassionate opinion of their works, even if they had been acquainted with them, which they rarely were.”¹

L'éminent professeur d'Oxford, Thomas Erskine Holland, a également rendu hommage au célèbre écrivain espagnol dans une des leçons d'ouverture de son cours, leçon qui est reproduite dans les remarquables *Studies in International Law*, publiées en 1898. Un autre auteur anglais, Thomas Alfred Walker, dans son *History of the Law of Nations*, paru en 1899, a consacré aux *Relectiones theologicae*, plusieurs pages d'analyse. Enfin, dans une collection dirigée par le savant Antoine Pillet, un professeur français, Joseph Barthélemy a composé une étude développée sur la biographie et sur l'œuvre de François de Vitoria.²

Ici notre travail peut cesser: nous avons tenté de retracer la vie et l'action d'un des grands précurseurs de Hugo Grotius. François de Vitoria s'impose de nos jours encore par la vigueur de raisonnement, la noblesse de sentiment, l'amour profond de l'humanité. Il fut modeste, simple, bon; il se constitua le défenseur inébranlable de la vérité et de la justice. Quiconque lit ses écrits, estime l'auteur et c'est pourquoi je me permets d'apporter à son nom glorieux un tribut d'admiration.

ERNEST NYS.

British Museum, 20 Août, 1913.

¹JAMES LORIMER, *The institutes of the law of nations*, tome I (1883), p. 71.

²*Les fondateurs du droit international, leurs œuvres, leurs doctrines*, avec une introduction de A. PILLET (Paris, 1904), p. I et suivantes.

INTRODUCTION

By ERNEST NYS.

Translated from the original French by John Pawley Bate.

I.

One of the masters of the philosophy of history, Robert Flint, makes the remark that it is at a comparatively late stage that any science definitely separates itself from contiguous fields of knowledge and assumes an independent form. In the early part of the seventeenth century the Law of Nations was established in this manner as an independent domain, if I may so express it. As Flint says, the man of genius who is called the founder of a science merely brings together its already existing elements; he confines himself to uniting its *dissecta membra* and breathing into them the breath of life. Such was the rôle of Hugo Grotius and such was the effect produced by his treatise, *De jure belli ac pacis* (Paris, 1625). That celebrated writer had had precursors, but it is correct to say that none of them had considered the subject in its entirety. Confining themselves to given portions of it, some had made a special study of the laws of war, others of the law of embassy, and some—few in number, it is true—had devoted themselves to the examination of certain maritime questions arising in time of war. Furthermore, theologians and canonists and civilians, in many passages of their voluminous writings, had expressed their opinions with regard to the justice of war, the capture of enemy property, the fate of prisoners of war, and other problems arising in the relations of political communities. It must be borne in mind, too, that from the eleventh or twelfth century of our era the genius of Europe displayed itself in the form of an association of republics and principalities and kingdoms, which was the beginning of the society of nations. Elements had, undoubtedly, been borrowed from Greek and Roman antiquity, from Byzantine institutions, from those Arabo-Berber sultanates which had established themselves along the north coasts of Africa, and from the Moorish kingdoms of Spain; but new sentiments were showing themselves and generating aspirations towards political liberty. The

members of this association were united by religious bonds; they had the same faith; they were not widely separated by speech, and at any rate, Latin, the language of the Church, was available to them; they admitted a certain equality or at least none of them claimed the right to dominate and to rule over the others. A formula came into use which gave expression to these diverse conceptions, *Respublica christiana*, *Res christiana*. In theory the civilians undoubtedly attributed to the elected heads of the Holy Empire those rights and privileges which the classical jurists had recognized in the Roman Emperors; these were, however, merely pompous phrases which led in reality to no serious result and which, even as the grandiloquent expression of a theory, did not survive the first half of the fifteenth century. Following the closing years of the fourteenth century, the kings of France affirmed their complete independence. In England all subordination to the Empire was denied; Edward II, King of England, had declared, "*Regnum Angliae ab omni subjectione imperiali esse liberrimum.*" Imperial pretensions had likewise been repulsed in Spain.

The *respublica christiana* comprised a considerable number of members. Allowing for different degrees of independence, these members were estimated at 2,000. This means that supremacy was difficult or even impossible; for at the first attempt to gain an exclusive domination, leagues would be formed among the oppressed with a view to destroy or weaken the oppressor. Moreover, the strength of this Empire and of these kingdoms, republics, and principalities, must not be exaggerated; exact figures we have none, but from calculations that have been made it appears that in 1480 the population of Europe barely exceeded 50,000,000, and it is an interesting detail to note the estimate that the population of France was 12,500,000, of Italy a little over 9,000,000, of Spain nearly 9,000,000, and of England 3,700,000.

In the thirteenth and fourteenth centuries the introduction of the epoch in question into the international world (as we may call it) was criticized as a great subversion by jurists imbued with the Roman tradition. In their system different peoples were only "sections of the Roman Empire," *sectiones Romani Imperii*. To the Romans the term *jus gentium* signified in the wide sense the law common to civilized peoples and included both public and private law; in the narrow sense it meant the principles governing the relations of the Roman people regarded as a whole with foreign peoples similarly

regarded.¹ Jurists had shown how the *jus gentium* in the narrow sense gave rise to the formation of distinct peoples and consequently to the foundation of kingdoms, to the intercourse of political communities and in the end to wars. In the thirteenth and fourteenth centuries the glossators and commentators, who upheld the claims of the Holy Roman Empire, taught that this idea of a *jus gentium*, which would give rise to the formation of distinct peoples, led to the destruction of unity. In their eyes the Law of Nations became a reproach. In the gloss of Accursius this law appears as the work of men. "They needed statutes, *statuta*, it is said, and therefore they drew up a great number of them, notably on war and captivity; collected, they were called the Law of Nations."

That which publicists have styled Law of Nations, law between nations, European public law, international law, does not yet appear as a distinct science in the middle ages. But, as we have seen, theologians, canonists, and publicists were already discussing a certain number of questions dealing especially with belligerent relations. Wars, it is well to point out, were frequent and they were not limited to wars between political communities or princes; the pest of those distant ages was private war, *Faustrecht*, *Faida*, as it was called; it was the right, broadly speaking, of every free man to seek his own justice by attacking whomsoever wrought him ill and by bringing his entire family into the quarrel. The Church strove energetically against this hateful state of things; the provisions inserted in the collections of canon law relating to resort to arms, and originating in canons issued by Councils or in decretals published by the Popes, are concerned with private rather than with public warfare, and that is why authors discussed so long the question whether the rules concerning the *Treuga Dei*, the truce of God, applied to public war. In most countries the central authority, however weak it might be, set itself the task of extirpating the mischief by requiring for private war the observance of certain conditions, by reducing the number of those who had the strict right to make it, and by imposing certain delays upon them. Here, too, writers accomplished their duty; theologians, canonists, and civilians were at one in reserving the right of making war to princes and to the heads of political communities.

Among the men who exercised a beneficent and lasting influence in these matters may be named Gratian and St. Thomas Aquinas. Gratian taught at Bologna, and between 1139 and 1150 drew up a col-

¹ALPHONSE RIVIER, *Principes du droit des gens* (Paris, 1896), vol. I, p. 5.

lection meant to be used in teaching canon law; this was the *Concordia canonum discordantium*, or, as posterity called it, the *Decretum*. Gratian made himself the champion of the claims of the Holy See, and thus he gained, in the greater part of Christendom, partisans who disseminated his work, made use of it as a manual for teaching, and commented upon it. In order to give an idea of the importance of the *Decretum*, it is enough to recall that it was reproduced in numerous manuscript copies and that after the invention of printing it went through manifold editions. The first printed copy was made at Strassburg in 1471; and from that date only up to 1500 as many as thirty-nine editions can be counted. Gratian treated of war in *Causa XXIII* of the second part of the *Decretum*. He propounds eight questions. He admits that war may be lawful, but he stipulates as a condition that it be imposed by necessity, and he describes it as a situation in which action must not be based on cupidity nor attended with cruelty, but must be directed toward the securing of peace.

St. Thomas Aquinas also exercised extraordinary influence here. He had taught at Paris, at Cologne, at Rome, and in different cities of Italy. In 1274 he was appointed to take part in the labors of an Ecumenical Council, but he died March 7 of that year, in a convent of the diocese of Terracina, during his journey to Lyons, where the Council took place. He was 48 years of age.

The great work of St. Thomas Aquinas is the *Summa totius theologiae*, the composition of which began in 1265 and occupied the last nine years of the author's life. St. Thomas has devoted to the law of war the fortieth question of the *Secunda secundae*. In four articles he examines the following points: "Is it always a sin to make war? Is it lawful for clerics and bishops to make war? Is it lawful to lay ambushes in war? Is it lawful to fight on feast days?" Needless to say, in all the pages in which the author answers these questions he displays moderation and humanity and a spirit of conciliation; many of his phrases have become maxims which have been repeated and approved by the writers of the following centuries in their dissertations on the law of war.

A writer has pronounced the following just judgment upon St. Thomas Aquinas: "He does not make his appearance in history as an inventor, as the initiator of a new doctrine which aroused at one and the same moment enthusiastic adhesion and passionate hostility. His task and his mission seem to me to have been rather to sum up and co-ordinate, in a spirit of great moderation and with much perspicacity,

logic, and good sense, the most widely spread, or at any rate the most powerful, doctrines of his time, in such a way as to form of them an harmonious whole fitted for the uses of instruction; for in his works one can always trace the teacher."¹

Without in any way lessening the personal worth of St. Thomas Aquinas, it may be asserted that his influence was largely due to the fact that he belonged to the Order of Dominicans founded by St. Dominic Guzman. In 1205 the latter had begun to preach in Languedoc against the Albigenses, but the labor of conversion—the "holy preaching," as it was called—produced hardly any results. Some years later he founded an institute for preaching at Toulouse; this was the modest beginning of an institution which was destined to extend throughout the centuries over the whole world. In 1215 he obtained the help of the bishop. As the general council, held in the same year, had forbidden the creation of new orders, he could not gain the support of Innocent III; but in 1216 he received the approbation of Honorius III. The Order of Friars Preachers then consisted of seventeen members; at the death of St. Dominic, which took place in 1221, the work was flourishing, there being sixty houses in different countries of Christendom and more than five hundred brothers. It was only under the pontificate of Gregory IX, who reigned from 1227 to 1241, that the Dominicans found themselves invested with judicial powers in questions of heresy, as the mandataries of the Holy See and assessors of bishops.²

In 1219 Honorius III, when recommending the new Order spoke exclusively of the preaching to which its members were dedicated. The preaching of the faith required a doctrinal preparation, and study was therefore deemed obligatory. "The Dominicans," writes an author, "had to have a special training in everything that could help in the refutation of heretics and in the defense of the faith. They were to study metaphysics only within the limits set by their constitutions. They were forbidden to give themselves to subtle speculations and to cultivate alchemy. Morals, theology, and the study of the *Liber sententiarum* of Peter Lombard, a vast theological encyclopedia, had precedence over philosophy. It was then impossible to study theology without a thorough knowledge of logic."³

¹H. R. FEUGERAY, *Essai sur les doctrines politiques de St. Thomas d' Aquin*, précédé d'une notice sur la vie et les écrits de l'auteur par M. BUCHEZ (Paris, 1857), p. 8.

²TH. DE CAUZONS, *Histoire de l'Inquisition en France*, vol. 1 (Paris, 1909), p. 429.

³CHARLES THUROT, *De l'organisation de l'enseignement dans l'Université de Paris au moyen âge* (Paris, 1850), p. 115.

In our own day a member of the Order has paid a well-deserved tribute to the Dominicans: "According to the institution of St. Dominic," says he, "study is an obligation of rule for the Friar Preacher, and a universal, necessary, and permanent function. And without going as far as the celebrated Cardinal Cajetan, who held that every Dominican failing to devote four hours a day to study is in a state of mortal sin, it is certain that a Dominican who does not ordinarily busy himself in intellectual work is not doing as he should and offends gravely against the Rule."¹

One of the favored books of the Dominicans was, of course, the *Summa totius theologiae* of the man who was the glory of their Order as he was the honor of the whole Church. The doctrines taught by St. Thomas were thus echoed far and wide.

In the last half of the fourteenth century books began to appear which their authors had devoted to special parts of what now forms the Law of Nations. We may mention, as the most ancient of the works of this kind which have been preserved, the treatise *De bello* of Joannes de Legnano, a professor at Bologna, where he died in 1383. This writer had on several occasions been charged with diplomatic missions. He busied himself at the same time with law, theology, philosophy, morals, and astrology.² As regards astrology, the lucubrations which figure in his book are curious, but there was nothing in them to shock his time. Another work is *l'Arbre des batailles* of Honoré Bonet. He was born in Provence and belonged to the Order of St. Benedict. In 1368—he was then at least twenty-five years old—he went to Rome. In 1382 he was presented with the benefice of Selonnet in the diocese of Embrury. We see him next at the University of Avignon, where he became *doctor decretorum*. His work was probably composed about 1384. One part is devoted to the law of war. In 132 chapters the author treats of the origin of war, of the lawfulness of war against infidels, of the rights of the Emperor, of the Pope, and of kings as regards war, of questions about things taken from the enemy, ransom of prisoners, and similar matters. These curious and interesting pages are full of noble sentiments.

Let us mention that Christian de Pison utilized the work of the Prior of Selonnet in his *Traité des faits d'armes et de chevalerie*. Honoré Bonet and Christian de Pison were not without a certain influence. *L'Arbre des batailles* was in fact reproduced in superb manuscripts

¹D. A. MORTIER, of the Friars Preachers, *Histoire des maîtres généraux de l'Ordre des Frères Prêcheurs*, vol. I (Paris, 1903), p. 63.

²THOMAS ERSKINE HOLLAND, *Studies in international law* (Oxford, 1898), p. 44.

which formed parts of the libraries of great princes, and after the discovery of printing it went through several editions. The work of Christian de Pison obtained its share of honor also.

Grotius has given us the names of some authors. He refers to special works, "composed, some by theologians, such as those of Franciscus de Victoria, Henricus de Gorcum, Wilhelmus Matthaei, and Joannes de Carthagena; others by jurists, such as those of Joannes Lopez, Franciscus Arias, Joannes de Legnano, and Martin of Lodi." He blames these authors for a want of order and exactitude and especially for ignorance of history. He recognizes that Peter du Faur de Saint Jovis has attempted to supply this lack in some chapters of his *Semestria*, and that two other writers, with the same end in view, have more comprehensively illustrated certain definitions and general maxims by the examples which they gathered. "I refer," says he, "to Balthazar Ayala and Alberico Gentili, especially the latter, from whose work I admit that I have derived some help, and I think that others will be able to profit by it." Beside these remarks Grotius furnishes some general information, pointing out, among the authors whom he has consulted for the law of nature and the law of nations, the writers of classical antiquity, the Fathers of the Church, the scholastics, "who often manifest great genius," and the jurists who had made a special study of Roman law. Among these jurists he mentions Irnerius and his successors, "such as Accursius, Bartolus, and a great number of others who for a long time have been recognized as authoritative at the bar," and those who have combined the pursuit of belles-lettres and the study of law. He also alludes to Alciati and his disciples and indicates by name Covarruvias, Vasquez, Bodin, and Hotman. Among all these writers there is one whose correct name was discovered only thirty years ago, Wilhelmus Matthaei. The real name is Wilhelmus Mathiae, author of the *Libellus de bello justo et licito*, which appeared at Antwerp in 1514.

Among these names we note that of Franciscus de Victoria, the subject of this essay. It was not only in the *De jure belli ac pacis libri tres* that Grotius referred to him; he had previously done so several times in the *De jure praedae commentarius*, which he had written in 1604 and which was published in 1868 under the care of Professor Hamaker.

Before Franciscus de Victoria the law of war had been the subject of studies by Spanish authors. At a time when the science of the Law of Nations had not yet taken form, we find St. Isidore, Bishop

of Seville from 596 to 636, inserting in his work entitled *Etymologiae* a definition or rather a description of the *jus gentium* which approaches closely to the modern conception. According to Heinrich Dirksen he had borrowed his texts concerning *jus naturale*, *jus civile*, and *jus publicum* from the *Institutes* of Ulpian, wherein the *jus militare* was placed side by side with the *jus gentium* and made a subject of treatment. The *jus gentium* of St. Isidore corresponds almost exactly to our international law and classified by the side of it is the *jus militare*, a statement of the matters which compose the law of war. These passages about the *jus gentium* and the *jus militare* are to be found in the fifth book of the *Etymologiae*; in the eighteenth book the author treats of war and enumerates the various kinds. One circumstance, moreover, helped to give exceptional importance to the utterances of the learned bishop on the law of war: in the twelfth century Gratian inserted them in his collection together with other texts of the same author, and as the *Decretum* was the subject of discussion and comment for centuries, and as it is still an integral part of the *Corpus Juris Canonici*, they have acquired a considerable importance in education and in doctrine.

Mention must be made of St. Raymond of Peñafort. Born between 1175 and 1185, in the castle of Peñafort in Catalonia, he studied at the university of Bologna, where he became a doctor of law and where he taught from 1216 to 1219. Returning to Spain, he was made canon of Barcelona and in 1222 he entered the Order of St. Dominic. He was then called to Rome by Gregory IX, to form a new canonic collection from earlier compilations and the decretals of this Pope. In 1238 he was chosen to be general of the Dominican Order, but at the end of two years he resigned the position. He came home again and strove for the unity of the faith against heretics, Jews, and Mussulmans. He showed himself a great advocate of the study of oriental languages, having especially in view the training of friars able to preach the Christian faith. He died in 1275. In addition to the collection of the *Decretals of Gregory IX*, St. Raymond of Peñafort composed the *Summa poenitentiae*, wherein questions relating especially to the law of war are the subject of examination.

A monument of legal science, curious alike for the number of topics treated, and for what one might call the precocity of a great number of its provisions, which really are far in advance of the time at which they were put forth—such is the collection known as *Las siete partidas*. This was the work of King Alfonso X of Castile, who

had as collaborators Jacome Ruiz, Fernando Martinez, and Roldum. The *Siete partidas* deal with ecclesiastical law, politics, legislation, procedure, and penal law; the law of war is the subject of extremely detailed regulations. In the second *Partida*, some chapters are given to military organization and to war. As regards war, much is borrowed from the *Etymologiae* of St. Isidore of Seville, of whom we have just spoken, and in many respects the influence of Mussulman law is very apparent. Maritime law is also dealt with. Commenced in 1256, the compilation took seven years to complete.

It is proper to mention here one of the great theologians of Spain, whose works contain considerations concerning war and the canonic rules relative thereto. Alfonso Tostado was born in Castile about the year 1400; he studied in all probability at Salamanca and attained distinction as a theologian and a canonist. He became bishop of Avila and took part in the labors of the Council of Basel. He died in 1455. In the Venetian edition of 1596 the works of Tostado occupy twenty-three volumes folio; the title-page of the first volume sings the praises of the author: He was "philosopher, theologian, very learned in the law, both canon and imperial, skilled in Greek and Hebrew;" the preface adds that he was erudite in mathematics and geography. Some sentences of his writings deserve citation. He reminds us that "*Bellum justum est justitiae executio*," just war is a mode of legal execution. According to his teaching, "in a just war everything that a man can seize becomes the property of the captor, both by divine law and by the Law of Nations, and it is just to kill; but an unjust war does not differ from public brigandage." He adds that "in a just war there is nothing that may not be wrought upon the enemy, except a violation of truth." "Wars are just when they are undertaken in order to obtain redress for injuries, restitution of property, or recompense for wrongs done. Once commenced, a just war may be continued until the wrongs done, the property seized, and the expenses incurred have been made good." The author has before his eyes, we must point out, not only public war, but also private war, when it is conducted in accordance with the rules laid down by the law of the country. Let us add that Alfonso Tostado maintained in his writings the thesis that ecumenical councils were of higher authority than the popes.

Mention should be made of Gonsalvo of Villadiego. He was born at Villadiego in the diocese of Burgos. He studied at Salamanca, where, after taking the doctorate in law, he was appointed a teacher.

Canon of Toledo in 1476, he was nominated by Ferdinand and Isabella to hold the position of "auditor" for the affairs of Spain in the tribunal of the Roman Rota. He died at Rome shortly after his promotion to the episcopal see of Oviedo. He wrote a *Tractatus de legato*.

Joannes Lupus (Juan Lopez) was a native of Segovia. We possess certain information about him. We know that he went to Rome, where he was imprisoned in the Castello del Sant' Angelo, but we do not know the reason of his detention. In volume XIII of the *Tractatus universi juris* of Francesco Ziletti, first part, first folio, a letter is to be found dated the sixth day before the kalends of September, 1491; it was written in the town of Siena by Joannes Lupus, *Sedis Apostolicae protonotarius et Segobiensis decanus*. Lopez was vicar of the Archbishop of Siena, Cardinal Piccolomini, afterwards Pius III. He died at Rome in 1496. One of his writings, *De matrimonio et legitimatione* is dated from the Castello del Sant' Angelo, the sixth day before the kalends of November, 1478. Two other of his writings are entitled: *De confoederatione principum* and *De bello et bellatoribus*.

We may also mention Franciscus Arias de Valderas, a native of the ancient kingdom of Leon. About 1530 he was a member of the Spanish college at Bologna; in 1532 he upheld a thesis at Rome, which, after receiving a little amplification, was published in 1533 in the capital of the Christian world under the title *De bello et ejus justitia*. Arias is a lover of peace, but it must, with regret, be stated that he admits the persecution of heretics and that he cites in this connection the example of Jesus chasing the money-changers from the Temple.

II.

In the history of humanity there has been no epoch comparable in importance to the glorious years which mark the end of the fifteenth and the beginning of the sixteenth century. Then took place that event, the greatness of which can not be exaggerated, the discovery of the New World—in other words the addition of an immense field to the theatre of human activity and the inclusion of the whole globe within the scope of man's political activities. How the imagination must have been struck when there came to the countries of Europe, where the Christian commonwealth—the *respublica christiana*—was concentrated, first the news that the bold expedition of Christopher Columbus had resulted in the discovery of lands of which no one up to that time had known the existence, and then on numerous other occasions the further news of the struggles of the *conquistadores*, the

happy issue thereof, and the conquest by the Spaniards of countries endowed by nature and containing the greatest riches. The discovery by the Portuguese of the route to Asia by way of the Cape of Good Hope could not have seemed less marvellous and astonishing to the most vivid imaginations. And as a still further addition to these deeds, thirty or forty years previously the art of printing had been discovered, thus furnishing the precious means of communicating writings and of securing for them circulation and diffusion. Is it necessary to recall that in the same era there took place that glorious movement which is called the Renaissance, and thanks to which, cultivated intellects found themselves once more in the presence of classical beauty? In so far as Spain is concerned, fresh causes of rejoicing appeared for the writers of this epoch: Christians, they saw the triumph of the cross over the crescent; Spaniards, they saw, in their complete victory, the termination of the wars which their ancestors had for so many centuries waged against the Moors.

In this most important epoch lived Franciscus de Victoria, the man whose life and works are the subject of these pages.

Franciscus de Victoria receives his surname from Vitoria, the chief town of Alava, where he was born—in 1480 according to some writers, but in the first years of the first decade of the fifteenth century according to others. His parents removed to Burgos when he was still a child and it was there that he received the first elements of learning. While yet young he took the Dominican habit in the convent of San Pablo at Burgos, one of the three great houses of the Order in Castile; in so doing he followed the example of his elder brother, who had already become a member of the Order. After the conclusion of his novitiate, Franciscus de Victoria was sent by his superiors to Paris, where the Order had a college. The Friars Preachers had been able to install themselves, August 6, 1218, in a guest-house for poor foreigners, founded by Jean de Barastre, dean of St. Quentin and chaplain to the king, and on the January 3, 1221, they had been solemnly confirmed in the ownership thereof. The house of St. Jacques had not been long in procuring admission into the University, and agreements had been concluded with regard to lectures and degrees—agreements, let us note, which gave rise to frequent conflicts.¹ It was there, we may remind the reader, that, at the time of the French Revolution, were held the meetings of those who, because of the place where they met, were called Jacobins.

¹VICTOR LE CLERC, *Discours sur l'état des lettres au quatorzième siècle*. Dans *Histoire littéraire de la France au quatorzième siècle* (Paris, 1865), vol. I, p. 101.

At Paris one of the teachers of Franciscus de Victoria was Peter Crockaert, *Petrus de Bruxellis*. This man was born at Brussels about 1460; at first an ardent disciple of the Scot, John Mair, and like him a nominalist, he became a Dominican in 1503 and displayed the greatest zeal for St. Thomas Aquinas; in one of his books, where he treats of questions relating to the logic of Aristotle and touches on one point of the doctrine of the Angel of the School, he styles himself *Divi Thomae doctrinae interpretes et propugnator acerrimus*. Very close bonds attached Franciscus de Victoria to the Belgian theologian; for in 1512 he supervised the printing of a work by him, a commentary on the *Secunda Secundae* of the *Summa* of St. Thomas. Crockaert, already reader of the *Sententiae*, took the degree of bachelor, and in 1510 he became a licentiate. He died in 1514.

Franciscus de Victoria found his own merit recognized. In 1513 he was designated by the general chapter of the Order held at Genoa for promotion to the degrees, and two years later he was confirmed by the general chapter held at Naples in the office of lecturer on the *Libri sententiarum* of Peter Lombard. In 1520 he was admitted to the Sorbonne and on March 24, 1521, he obtained the degree of licentiate in theology.

In his studies on Spanish law Eduardo de Hinojosa has said that, if Spain had notable theologians before Franciscus de Victoria, it is nevertheless to him that the revival of theology is due.¹ It is incontestable that Franciscus de Victoria not only gave a vigorous impulse to the science of his choice, but that he also impressed a new character upon it; he embellished and enlarged it; thanks to him, the majority of Spanish theologians renounced the incorrect, rude, and barbarous form of their predecessors; thanks to him, ideas came to take the place in discussions formerly held by phrases; thanks to him also, other sciences were drawn upon in the study of theology. It is thus that in his lectures devoted to the rights of the Indians and to the law of war, problems are treated not as if they were without practical and actual interest, designed merely to exercise the reason and to furnish the opportunity for objections and refutations, but as questions raised by grave events, the solution of which is of interest to all men of heart, since in practice it often leads to serious consequences. Moreover the illustrious publicist does not content himself with a vain display of erudition; he is full of generosity and of kindness and his teaching breathes the noblest sentiments.

¹EDUARDO DE HINOJOSA, *Estudios sobre la historia del derecho español* (Madrid, 1903), p. 235.

Writers have attributed to the University of Paris the merit of having taught Franciscus de Victoria the doctrine which he merely transported into Spain. To be content with such an explanation one must be ignorant of the state of education in the capital of France at the beginning of the sixteenth century and not know that neither the love of innovation nor even mere curiosity of mind had any influence on the great majority of the teachers, for whom all science consisted in endless disputes on words and about words. In saying this we have no thought of reproaching the University of Paris for having pronounced against the teaching of Luther and for having condemned it. Other universities had already rebuked him. The reformer was, moreover, a menace to the existence of ecclesiastical institutions and he had to expect violent attacks. But even within the bounds of orthodoxy it was very necessary to maintain a hostile attitude to all who were not thoroughly imbued with the idea that the doctrines of the past were the perfection of wisdom. In the closing years of the fifteenth century Erasmus lived in Paris and saw the masters at work; he assuredly had sound judgment, and here is the verdict which he pronounced upon them: "Are there any brains more imbecile than those of the theologasters? I know nothing more barbarous than their speech, more coarse than their understanding, more thorny than their teaching, more violent than their discussions." "In 1500," writes Louis Delaruelle, "the University of Paris in its organization and in its methods is almost the same as it was a century earlier. It is always the formidable machine constructed in the Middle Ages for the manufacture of theologians. Everything there continues to be subordinated to this end. The study of literature consists entirely in that of grammar and is relegated to the lowest grade of instruction. Logic is ever the science of sciences; disputation continues to be preferred to any deep study of authors."¹

In 1527 Pierre de la Ramée, *Ramus*, studied at the University of Paris. "When I came to Paris," he wrote at a later date, "I fell into the subtleties of the sophists, and I was taught the liberal arts by question and disputation without ever being shown a single other advantage or use in them."² To demonstrate the vice of this kind of instruction, let us say that disputation was all in all in it. "There is disputation before dinner," wrote Juan Luis Vivès in 1531, "there is disputation after dinner; there is disputation in public and in private, in every place and at every time. The bursars of the col-

¹LOUIS DELARUELLE, *Guillaume Budé: Les origines, les débuts, les idées maîtresses* (Paris, 1907), p. 54.

²CHARLES WADDINGTON, *Ramus (Pierre de la Ramée): Savie, ses écrits et ses opinions* (Paris, 1855), p. 23.

leges held disputations every Saturday; each in his turn was 'respondent' (*respondens*) and 'opponent' (*opponens*)." Ramus, whom we have quoted above, gives a more complete description still. "I believed then—the scholar must believe (so says Aristotle)—that there was no particular need to trouble myself about the nature or aim of logic, but that the only thing to do was to make it the object of our shouts and our disputes; I accordingly disputed and I shouted with all my might. If the business in hand was to defend in class some thesis on the categories, I believed it my duty never to yield to my adversary, were he a hundred times right, but to hunt for some fairly subtle distinction in order to embroil the whole discussion with it. If on the other hand, I were the assailant of the thesis, then all my care and effort were directed not to the enlightenment of my adversary, but to beat him by some argument, whether good or bad; so I had been taught and trained. The categories of Aristotle were like the ball with which we used to play our childhood's game and which we had to get back by our shouts when we had lost it, but which on the contrary we must not let any noise dispossess us of when once we had got it. I was then convinced that all logic reduced itself to a discussion about logic with vehement and furious words."¹

So it was obviously not among the masters of philosophy or theology in Paris that Franciscus de Victoria was enabled to acquire the precious possession wherein were united the spirit of research and of innovation, the tendency toward progress, the love of his neighbor, and the sentiment of solidarity. Nature had endowed him with great qualities; in himself there reposed a strength that nothing was to curb or to stifle. He had, then, the good fortune to find himself in surroundings favorable to the development of his innate gifts. In reality everything demonstrates that he was in constant communication with the humanists who, side by side with the representatives of official instruction and despite their hostility and anger, were at that time making the capital of France the center of a vast movement of reconstruction.

In 1520, during his stay in Paris, Franciscus de Victoria became intimate with one of the most deserving of the humanists, Josse van Assche, *Jodocus Badius Ascensius*, Josse Bade, as French writers called him. This latter was born at Ghent. After having gone through a course of study at the University of Louvain, he had

¹CHARLES WADDINGTON, *op. cit.*, p. 24.

betaken himself to Italy, where he had studied Latin and Greek; later he had taught at Valencia and Lyons and then he had established himself as a printer at Paris, and, without abandoning his literary labors, had published a number of works, among which were many that were written or at any rate annotated by the representatives of the reconstruction theories.

The name of Franciscus de Victoria figured on the title-page of two volumes of sermons by Pedro de Covarrubias, a Spanish Dominican: this shows that he had revised the work. Doubtless if this were an isolated fact, it would not justify any forcible conclusion; but other facts can be added to it which show that Franciscus de Victoria was no stranger in this "republic of letters," as it has been called, which dates its beginning from the year 1516 and of which Erasmus was the recognized head. When in 1527 a campaign of denunciation was started in Spain against this illustrious savant, he addressed a letter to Franciscus de Victoria; and their common friend, Juan Luis Vivès, testified to the eminent qualities of Victoria, and assented that he had affection and adoration for Erasmus.

Thanks to being brought into contact with men animated by noble sentiments, Franciscus de Victoria undoubtedly found his natural leanings strengthened and received help from this beneficent influence for taking in hand the defense of the just cause of the Indians. In treating of the cruel topic of the law of war, he asserted principles which bore the imprint of moderation and humanity. Almost the whole of the pacific movement at the beginning of the sixteenth century issued from humanism, and this had produced its effect on the thought of the Spanish publicist.

Shortly after 1521, Franciscus de Victoria returned to his own country, where he was appointed first regent of the Dominican College of Saint Gregory at Valladolid. In 1526 the primary chair of theology at the University of Salamanca became vacant by the death of Pedro, or rather Pablo, of Leon, who had held it since 1507. It was thrown open to competition and on September 7, 1526, the judges awarded it unanimously to Franciscus de Victoria, who was sworn in before a notary on September 21 and occupied the position until his death.

A member of the Order of St. Dominic has tried recently to show, by following the information supplied by contemporaries, the method of instruction and the professorial qualities of the great man.

"Franciscus de Victoria," he writes, "came up to all hopes, he even surpassed them. Under his powerful direction the College of Salamanca attained a position unique in Spain. His manner of teaching distinguished him from most of the other professors. Instead of the aridity of scholastic formulas, which he employed only in order to lay the bases of his teaching, he knew how to bring out eloquently their beauty and their grandeur. He did not despise elegance of diction; he loved to support the conclusions of theology by happy citations from the Fathers and by the facts of ecclesiastical history. His courses, made attractive by the grace of his language, rapidly reached universal favor. Solidity of doctrine with elegance of instruction, this is what was afforded by the long professorate of Franciscus de Victoria. For twenty years he filled the chair of theology at Salamanca, from 1526 to 1546, that is, until his death. He had the shaping of most illustrious disciples: Melchior Cano, Domingo Soto, Bartholomew of Medina, and many others boasted of having had him for their master. It was he who, according to their own admission, as well as according to the admission of savants outside the Order, restored theological teaching in Spain; it was he who, uniting solidity of doctrine to a literary style, provided the method which it was necessary to follow in order to win back for theology the place of honor. He did not write, but his disciples, greedy to hear him, piously gathered together his learned discourses. At least some of them were subsequently published."¹

The contemporaries of the incomparable professor were unanimous in extolling his talent for exposition. They also praise him for having dictated to his pupils. This method was undoubtedly not new. It had been employed at Paris for more than a century; it was also employed in other French universities; doubtless it appeared useful because the Spanish teachers had carried improvisation to the point of abuse and had too often preferred grandiloquence and inflated phrases to clearness and simplicity and precision.

The pupils of Franciscus de Victoria felt bound to pay homage to their master. One of the most illustrious of them, Melchior Cano, has done honor to him in magnificent terms. "Spain," writes he in *De locis theologicis libri duodecim*, "has received this eminent master of theology from the great goodness of God." He calls him *sacrae theologiae restaurator cui debent Hispaniae quod veram theologiam docuerit*. He adds that he has increased, enriched, and rendered more illustrious

¹D. A. MORTIER, of the Friars Preachers, *Histoire des maîtres généraux de l'Ordre des Frères Prêcheurs*, vol. v (Paris, 1911), p. 379-380.

the doctrine of Saint Thomas: "What doctrine I have," he goes on to say, "worthy of the approval of the wise, what skill I have in the judgment of men and things, what literary culture I have above other scholastics and utilize in my works,—doctrine, judgment and eloquence I owe all to this man, whom I have followed as my chief and to whom I have yielded obedience, giving careful heed to his precepts and his admonitions. . . . The principles which I teach belong as much to my master as to myself and more; I am bound to render him this justice. I desire that the wisdom of this illustrious man be proclaimed and known to posterity. Although I acknowledge myself to be much inferior to him, I wish to render him, as best I can, the thanks that I owe him. I also beg future readers of my works to believe that my master was infinitely greater than I can say."¹

Domingo Soto pays the same eulogistic tribute to Franciscus de Victoria. Born at Segovia in 1494, he had studied at Alcala and Paris. At the age of thirty he had entered the Order of St. Dominic. In 1532 he had become professor of theology at Salamanca for the evening course, whilst Franciscus de Victoria was the teacher in the morning.

One other testimony may be invoked among numerous others; it is that of Alfonso Garcia Matamoros, the author of the book, *De academiis et doctis viris Hispaniae, sive pro asserenda Hispanorum eruditione narratio apologetica*. He calls Franciscus de Victoria "the splendor of the Order of St. Dominic, the honor and the ornament of theology, the model of ancient religion. Franciscus calls theology down from heaven as Socrates in ancient times called down philosophy."

Instruction did not absorb all the activity of the great professor of Salamanca. On numerous occasions he was consulted by Charles V, who submitted cases of conscience to him and sought his advice on affairs of a delicate nature. It was in this way that he had to give his opinion on the validity of the arguments put forward by Henry VIII of England, with a view to procure the nullity of the marriage which he had contracted with Catherine of Aragon, the aunt of the Spanish monarch. The dissertation, *De matrimonio*, published in the *Relectiones* contains a passage relating to this historic suit.

In 1532 Franciscus de Victoria pronounced his famous dissertations, *De Indis* and *De jure belli Hispanorum in barbaros*, in which he examined the titles which the Spaniards might allege to justify their domination in the New World. We shall have an opportunity to examine them in detail.

¹D. A. MORTIER, *op. cit.*, vol. v (Paris, 1911), p. 380.

In 1539 Charles V submitted to the professor of Salamanca several questions about the affairs of the Indies. The letter is dated from Toledo, January 31. In the following year he addressed to him, on the same subject, another letter, dated from Madrid, March 31.¹ On March 21, 1541, Charles V consulted yet again the man in whom he had such confidence. It was about a grave matter which had been brought before the Council of the Indies by Bartholomew de Las Casas: Was it lawful and fitting to baptize adult Indians according to the form employed in the New World, that is to say, without giving them a preliminary religious instruction? Charles V commissioned Franciscus de Victoria to examine the point, to consult such of the theologians of Salamanca as he should deem it expedient to question, and to transmit their opinions together with his own. The conclusion was in favor of the thesis submitted by Las Casas.² Let us here note that the professor of Salamanca was probably better qualified than any other person to give a considered and well-informed opinion on the subject of the Indians. Several of his pupils with whom he remained in touch were devoted missionaries to the West Indies: for example, Alonso de Veracruz and Domingo de Salazar, both of them Dominicans, the latter of whom, after becoming professor of theology at Mexico, wrote a treatise on the titles possessed by the kings of Spain to domination over the Indians.³

A great event was preparing for the Church; it was the assembly of an ecumenical council. It is difficult in our day to imagine the importance then attributed to the assembly of the bishops of the Christian world. The struggles between the Holy See and the ecclesiastical representatives of the nations of Christendom were not forgotten. Sovereigns as well as clergy and laity threw themselves with ardor into endless disputations. Both those Catholics who remained faithful and the partisans of Luther demanded with the same ardor the convocation of the ecclesiastical authorities to decide what was conformable to dogma and to discipline.

After his interview with Cardinal Cajetan, Luther had appealed from an ill-informed Pope to a better-informed Pope; but on November 28, 1518, he had appealed from the Pope himself to the future general council and he renewed this second appeal after the condemnation pronounced by the bull of Leo X of June 15, 1520, against him and against his adherents.⁴ Since 1523 the Diet of Nuremberg had

¹EDUARDO DE HINOJOSA, *op. cit.*, p. 245.

²*Ibidem*, p. 195.

³*Ibidem*.

⁴ALBERT DESJARDINS, *Le pouvoir civil au Concile de Trente*. In *Revue critique de législation et de jurisprudence*, vol. XXXIV (Paris, 1869), p. 3.

demanded that Pope Adrian VI should summon a council in some town of Germany, and thereafter diets continued to insist on this summons. On June 2, 1536, Paul III issued a bull summoning a council for the following year; the town named was Mantua; but the Holy See met with constant difficulties; the Pope published as many as six bulls proroguing or convoking afresh the ecumenical assembly, and at last a bull of November 19, 1544, opened the council for March 15, 1545. "But," writes Frà Paolo Sarpi, "matters dragged and the council opened December 13, 1545; there were legates and bishops to the number of twenty-five."¹ The place of meeting was Trent. The Roman Curia would have preferred some town of the Papal States as the seat of the assembly; attempts were made with this object in view; the legates obtained from the Fathers a transference to Bologna; twice the Council was suspended; twice it resumed its sessions. Convoked afresh December 3, 1560, it closed its labors December 4, 1563. The work itself of the Council does not concern us here: we must confine ourselves to a summary of the situation created for the Holy See, the bishops, and governments. The Popes were reproached for having given predominance to the Italian element; in truth the majority was constantly formed of prelates who were dependent on the Curia, and in the closing period there were 150 Italian bishops against 66 bishops of other nationalities. The bishops of non-Italian countries were in opposition to the Holy See, in this sense at least that they constantly affirmed the independence of their spiritual functions. In this way it came about that the Archbishop of Grenada, Guerrero, complained that the bishops were transformed into vicars-general of the Pope, dependent on and removable by him, and that the Spanish prelates in general denounced the usurpations of the Holy See in episcopal authority and maintained that it would be impossible to remedy these abuses without restoring to the bishops all that had been usurped from them by Rome.²

The legates represented at one and the same time the council over which they presided and the Pope whose agents they were. The Popes had at first desired the presence also of the sovereigns and their personal co-operation in the labors of the council; but, if this desire was not realized, the princes at least entered into relations with it by correspondence and were represented by ambassadors.

¹*Histoire du Concile de Trente*, written in Italian by PAOLO SARPI, of the Order of Servites, translated by PIERRE FRANÇOIS LE COURAYER, doctor in theology of Oxford (London, 1736), vol. 1, p. 167.

²*Ibid.*, vol. II, p. 313.

"These," says an author, "were accredited to the council itself, which was treated as a power. Also they could not be received unless their credentials were perfectly in order. When presenting them they usually addressed a harangue to the council. They expressed themselves orally with as little discretion as their masters did in writing. Every one knows what excitement was aroused by the discourses of Amyot in 1551, of Pibrac in 1562."¹

The Fathers of the council held two kinds of meetings. There were public and solemn sessions or assemblies, in which decrees were issued and which were only twenty-five in number. There were also congregations, or preparatory assemblies; these were either general or special.

Theologians collaborated in the special congregations and in those general congregations which were public, for according to the rule the Fathers alone were admitted to the secret general congregations. "Below the Fathers," says the author just cited, "were the inferior theologians, such as the simple doctors of the Sorbonne, sent by the Pope and by the kings or brought by the prelates. Not being prelates themselves, they had no vote; admission to the secret general congregations was closed to them; there was only a small number of them who succeeded in obtaining an entrance there at the end of the council; they were admitted to and probably rendered great services in the public general congregations and private congregations. They themselves held meetings in which they prepared for all the others and which the Fathers attended at their pleasure."

It is stated that among the theologians who collaborated in the labors of the Council of Trent, the Spaniards distinguished themselves above all others. They were able, in fact, to put forward in the discussions men of the highest worth, such as Domingo Soto and Melchior Cano, to cite two names only. On the eve of the meeting of the council, the prince-royal, who afterwards became Philip II, acting on behalf of Charles V, had invited Franciscus de Victoria to take part in the labors of the ecumenical council; but the latter excused himself on the plea of age and persistent ill-health.² He died some months after the opening of the work. It has been stated that the influence of the illustrious thinker upon the Spanish prelates who sat at Trent was extraordinary, as is evidenced by quotations from his disciples among them and also from his old pupils among the theologians.

¹ALBERT DESJARDINS, *article cited*, p. 221.

²EDUARDO DE HINOJOSA, *op. cit.*, p. 201.

The Order of Dominicans had generally been faithful to the Holy See. Its traditional education proved this, and the names of eminent members, such as that of Juan de Torquemada, appeared in the first rank of the champions of the rights of the Pope against the pretensions of the Councils of Basel and of Florence. In 1511, under the pontificate of Julius II, nine cardinals, inspired by Louis XII, King of France, and by the Emperor Maximilian, had convoked at Pisa an ecumenical council which was to be opened on September 1; their contention was that, if the Pope neglects or refuses to convoke a council, this right belongs to the Sacred College. The master-general of the Order at that time was the famous theologian, Tommaso de Vio, born at Gaëta and thence called Cajetanus. He forbade the Friars Preachers to give any countenance to the assembly at Pisa and wrote his treatise, *De autoritate Papae et Concilii utraque invicem comparata*, wherein he contended that the Pope alone is the supreme head of the Church, that he is its lawgiver and its judge of ultimate appeal, that the council can neither impose a law upon him nor judge him, and that the papal approbation alone gives obligatory force to the decrees of the ecumenical assembly. From the lectures which his pupils published we know the opinions which Franciscus de Victoria, if the state of his health had allowed him to be present, would doubtless have expressed at the Council of Trent, on the subject of the relative positions of the Pope and the council and the relations between the spiritual and the temporal powers. These lectures are entitled, one, *De potestate ecclesiae*, another, *De potestate civili*, and the third, *De potestate Papae et Concilii*.

The learned theologian displays the profoundest respect for the Church and for its head. He places the *respublica spiritualis* and the *respublica temporalis* side by side and he teaches that both are perfect, that is to say, that they are self-sufficing; in other words, if either is unable to maintain itself unharmed and intact in its own sphere, it may do all that is needful to accomplish its object. The head of the Church has thus the right to act, not immediately and directly, as if usurping civil power, but by giving orders through the medium of his spiritual power. Franciscus de Victoria applies his reasoning to the case in which an unjust law has been established by a prince and to the case in which princes make war on one another about some country to the manifest detriment of religion; in this last hypothesis he admits that the sovereign pontiff may forbid the princes to make war and may, at need, constitute himself the judge

of their quarrel. In reality, he claims not to encroach on civil authority; his wish is to safeguard spiritual authority and to protect it from encroachments. He cites by way of analogy the case which might present itself in international affairs. "If," says he, "the Spaniards can not otherwise defend themselves against the wrongs done them by the French, they are entitled to occupy the cities of the latter, to impose new princes upon them, to punish the guilty, and to act as if they were the real masters: all the doctors are of this opinion."

As regards the relative positions of the Pope and the Council, Franciscus de Victoria would have the Council treat the Pope with deference; he exacts the avoidance of scandal, but he in no wise goes so far as to proclaim the superiority of the Pope. Juan de Torquemada, as we have seen, had defended the prerogatives of the sovereign pontiff against the Council of Basel; but the same Torquemada had cooperated in the labors of the Council of Constance which had deposed Pope John XXIII; and he had given his approbation to this measure. This approbation, the professor of Salamanca considers of great importance, and he recognizes the right to call the council against the will of the Pope, if the latter's character is destructive to the Church. Franciscus de Victoria does not even admit that the sovereign pontiff, of his own will and without reasonable ground, may dispense with the observance of decrees issued by the councils.

In the preceding centuries the rights of the Emperor had not only caused violent struggles in the domain of fact, but also keen and animated discussions among publicists. We have already seen how the kings of France and of England had affirmed their independence. In Spain, King Alfonso X of Castile, who had intrigued for the imperial crown, had, in the *Siete partidas*, attributed the highest position to the Emperor. "The imperial dignity," he has written "is the loftiest and excels all other dignities."

The utterances of jurists, seduced by the notions current in Roman law, were significant. To go no further back, we may cite Bartolus of Sassoferrato, who, in the middle of the fourteenth century, wrote these lines:

"If anyone asserted that the Emperor is not the monarch of the entire world, he would be a heretic; for he would make a pronouncement contrary to the decision of the Church and contrary to the text of the Gospel which says: 'A decree went forth from Caesar Augustus that a census should be taken of all the world,' as St. Luke has it, and so Christ, too, recognized him as emperor and master."

With regard to a papal bull denying the imperial supremacy, Bartolus did not hesitate to reproduce and to approve the contemptuous words of his teacher, Cino da Pistoia: "Let it go by with the other errors of the canonists." A contemporary of Bartolus, Alberico da Rosciate, had raised rational objections against the universal monarchy of the Emperor, and had come to the conclusion that the two powers were distinct and that the Pope was dominant in spiritual affairs and the Emperor in temporal affairs.

According to Franciscus de Victoria, the Emperor is not the lord of the world, "*Imperator non est dominus orbis.*" He proves his proposition by means of arguments of law and of fact; he recalls that the Roman Empire was divided into an empire of the East and an empire of the West, and that the emperors of Germany have never raised a pretension to be masters of Greece, whilst the Council of Florence recognized John Palaeologus as lawful sovereign. "The patrimony of the Church," writes he, "is not subject to the Emperor; the kingdom of Spain and the kingdom of France are no more under his domination, although the gloss says that this independence is matter of fact and not matter of law; doctors even concede that some cities formerly subject to the Empire have succeeded in withdrawing from its rule by force of custom, a thing which would not be possible, if their subjection were by divine right."

III.

We must now go back a few years and relate the incident already alluded to, mentioned in the letters of Erasmus and Vivès, especially the part played by Franciscus de Victoria when the great humanist was violently assailed in Spain.

Erasmus had paid a tribute to the purity of Luther's morals in a letter addressed to Cardinal Wolsey in 1518; in a letter written to the rector of the University of Erfurt, he had admitted the usefulness and the beauty of the object pursued by the German monk. On March 28, 1519, Luther initiated a correspondence with the celebrated savant; he testifies to his respect for him and to his gratitude for the services rendered by him to literature and to the emancipation of thought. Erasmus's answer was a mixture of approbation and advice. But soon events assumed an aspect of violence, and Erasmus, something of a sceptic, but always pacific and the enemy of all excess, refused to follow the impetuous rebel or even to pass over in silence

one of his doctrines in which he saw danger to the human mind.¹ In the month of September, 1524, he wrote the book, *De libero arbitrio*; Luther replied in 1525 with the treatise, *De servo arbitrio*, and Erasmus wrote the *Hyperaspistes diatribe ad servum arbitrium*. "The rupture," says a writer, "was henceforth irreparable. Erasmus remained until his death the enemy of the Reformation and did not cease to write against it; thanks to his powerful influence, thanks to his numerous affiliations, all the humanists followed his example. . . . If Erasmus became the bitter enemy of Luther, the latter did not show him any consideration. He did not lay down his weapons, even in the presence of death."²

The Catholics ranked Erasmus among the most valiant defenders of the faith and Pope Clement VII protected him. Nevertheless he had rancorous enemies, who, in many countries, tried to arouse the ecclesiastical authorities against him. In the month of April, 1524, Noël Beda, doctor of theology, formerly principal of the College of Montaigu, having become syndic of the faculty, denounced at the Sorbonne some propositions, which he had extracted from the works of the learned writer, and demanded their condemnation. The storm was long and very violent. In Spain also the tempest broke. Erasmus reckoned many friends there, more perhaps than in any other country of Christendom.³ But he had enemies also. In 1526 a campaign of denunciation was directed against him by the Spanish monks, who accused him of attacking the Holy Trinity, the divinity of Christ, and the divinity of the Holy Ghost.⁴ He was obliged to defend himself. The monks, the Franciscans especially, were animated by sentiments akin to hatred toward the great man.

The printed correspondence of Erasmus contains an important letter about these events. It is addressed "*theologo cuidam Hispano Sorbonico*," "to a Spanish theologian of the Sorbonne." The text completely solves the question concerning the identity of the addressee. The humanist mentions the fact that the whole movement was directed by one of his enemies, Edward Lee, with whom several years previously he had been engaged in violent polemics. In 1526 Lee was in Spain as ambassador of Henry VIII and he had aroused Erasmus's enemies, who had gone so far as to lay a plaint against him

¹E. S. MARSEILLE, *Erasmus et Luther: Leur discussion sur le libre arbitre et la grâce* (Montauban, 1897), p. 14 et seq.

²*Ibid.*, p. 35.

³MARCELINO MENENDEZ PELAYO, *Historia de los heterodoxos españoles* (Madrid, 1880), vol. II, p. 61.

⁴*Ibid.*, p. 65 et seq.

in the palace of the Emperor. Among the leaders was the prior of the Dominican convent of Burgos. Erasmus names him and adds, "*tuus, ut audio, frater*," "your brother, as I am informed." There is no room for doubt. It is to Franciscus de Victoria that Erasmus is writing. Moreover, the devoted friend of this latter, Juan Luis Vivès, had expressed himself in the most flattering terms with regard to Franciscus de Victoria, whom he had known at Paris when he himself was studying at the College of Beauvais under the direction of Jean Dullaert, a native of Ghent. Thanks to Juan de Vergara, secretary of the Archbishop of Toledo, Alfonso de Fonseca, Vivès was kept informed of the plot that was being hatched and helped in the preparation of defense. "Diego de Victoria," he wrote to Erasmus, "has a brother, Franciscus de Victoria, like him a Dominican, a theologian of Paris, a man of genuine reputation, in whom much confidence is placed; more than once he defended you at Paris before numerous theologians; from his childhood he has occupied himself with literature; he admires you, he adores you. He is a teacher at Salamanca, where he holds what is called the primary chair." The monks tried to arouse the mob and to drive them to sedition; they took an oath to hearken neither to Emperor nor to bishops, saying that they owed obedience to God rather than to man.¹ Because of their clamors and raging sermons, it was necessary for the civil authority and the religious authority, almost all the representatives of which, including the Emperor and the archbishops of Toledo and Seville, were favorable to Erasmus, to agree to promise an inquiry and to nominate a commission of investigation.

In his letter to the "Spanish theologian of the Sorbonne," that is to say, to Franciscus de Victoria, Erasmus had asked the latter to intercede with his brother, Diego, and also with Noël Beda, who at the same time was raising almost insurmountable difficulties for him in Paris.

In France, the Sorbonne condemned the propositions which Beda pretended to have extracted from the works of the great humanist; and, in December, 1527, it gave a doctrinal judgment in thirty-two articles. It is true that for four years the government refused to allow this censure to be printed.²

In Spain, the commission of inquiry met at Valladolid; it comprised twenty-one theologians, among whom was Franciscus de Vic-

¹H. DURAND DE LAUR, *Erasmus, précurseur et initiateur de l'esprit moderne* (Paris, 1872), vol. 1, p. 492.

²*Ibid.*, vol. 1, p. 507.

toria. The partisans of Erasmus were greatly in the majority. But no judgment was pronounced. The plague which was then desolating the country caused a suspension of the proceedings and they were never resumed. It is true that another blow was dealt to the celebrated writer. "Erasmus," says Llorente, "thought he had come out of this affair well; not so at all; for the Council of the Supreme forbade the reading of his *Colloquies*, of his *Praise of Folly*, and of his *Paraphrase of the New Testament*."¹

We possess some interesting information about Franciscus de Victoria, thanks to two learned Belgians who knew him personally, Nicholas Cleynaerts and Joannes Vasaeus. Cleynaerts was born at Diest in 1493 or 1494; he studied at the University of Louvain, where, in 1519, he obtained the authorization to teach Greek and Hebrew, either publicly or privately. In 1531 Joannes Vasaeus, a native of Bruges, attended his lectures. In this year the natural son of Christopher Columbus, Fernand Columbus, "the greatest bibliophile of his time, perhaps of all time," as Henry Harrisse describes him, was looking for learned persons whose collaboration he wished to secure in organizing the library which he was creating at Seville and which was afterwards called, from his name, the Columbine.² He was very rich; his annual income was reckoned at a sum equal in our money to 300,000 francs, and to this income must be added the profits accruing from commercial operations. He made offers to Cleynaerts and Vasaeus which they accepted. In the month of October, 1531, Fernand left the Low Countries and directed his steps towards Spain in company with the two Belgians. At Salamanca, Cleynaerts and Vasaeus made the acquaintance of Franciscus de Victoria, with whom they remained in relations of close friendship, as is proved by passages in their writings. It is known that Cleynaerts was called to Portugal to direct the education of the brother of King John III, Prince Henry, who was then Archbishop of Braga and who subsequently ascended the throne. Vasaeus became librarian to Fernand Columbus; at the end of three years he returned to Salamanca, where he tried to gain a livelihood by giving lessons. Later on he was called to Portugal. He is the author of *Chronicon rerum memorabilium Hispaniae*, only the first volume of which appeared. He died in 1552.

¹*Histoire critique de l'inquisition d'Espagne depuis l'époque de son établissement par Ferdinand V jusqu'au règne de Ferdinand VII, tirée des pièces originales des archives du Conseil de la Suprême et de celles des tribunaux subalternes du Saint Office*, by D. JEAN-ANTOINE LLORENTE, sometime secretary of the Inquisition, translated by ALFRED PELLIER (Paris, 1817), vol. 1, p. 461.

²H. HARRISSE, *Excerpta Colombiana* (Paris, 1887), p. 25 et seq.

In his letters Cleynaerts makes several references to Franciscus de Victoria, with whom, moreover, he was in correspondence; he vaunts his extraordinary learning; he praises his admirable Latinity; he urges Vasaeus to pay the greatest heed to the advice which the professor of Salamanca gives him.¹

Shortly after the death of Franciscus de Victoria, Joannes Vasaeus paid an impassioned tribute to him in his *Chronicon*. "If he had lived," writes he, "what help he would have given me! His erudition was incredible, his reading almost unlimited, his memory ready; he was like a miracle of nature."² In a book on the *Adagia* of Erasmus the same author dedicates the following lines to the memory of the master of Salamanca: "In the whole of Spain there was no one so wise, so simple, and, I make bold to add, so saintly."

Franciscus de Victoria died August 12, 1546. For two years he had suffered much from rheumatic pains, and the disease made such progress that he had to procure a substitute for his theological lectures, Juan Gil Fernandez de Nava. The University, the Dominican Order, and the whole town gave him a touching funeral amidst general grief.

IV.

The lectures of Franciscus de Victoria have come down to us in part. After his death some former pupils collected his formal lectures, the *relectiones* which the professor had delivered, and had them printed. The first edition was not very correct; succeeding editions also left much to be desired in this respect; but the mistakes, after all, were mistakes of printing, which the reader can correct. One consideration, which is of more importance, forces itself on the mind of the reader; it goes to the root of the matter and raises the question whether the lectures, as they have come down to us, are quite complete. Even if no decisive answer can be given, it is certain that the dissertations, such as we now see them, are enough to give us an idea of the opinions of the master and, even as regards their form, they enable us to appreciate the elegance, the clearness, the charm of the Latin diction employed by the professor of Salamanca.

Their very title, *Relectiones theologicae*, shows that theology was in the fore-front; nevertheless some topics are treated which belong

¹NICOLAUS CLENARDUS, *Epistolarum libri duo* (Antwerp, 1556).

²JOANNES VASAEUS, *Rerum Hispanicarum chronicon*, Chap. VI: *Rerum Hispanicarum scriptores aliquot* (Frankfort, 1579), vol. I, p. 437 et seq.

to politics and to the Law of Nations. The author has been at pains to explain the way in which he views his task when occupied with legal problems. He maintains that the office and function of the theologian extend to such a point that no argument, no controversy, appears foreign to the profession and institution of theology. And especially as regards questions about the rights of barbarian populations, he affirms that they are still open to discussion, inasmuch as they have in no way been settled. To the objection that wise and prudent men have been entrusted with the administration, he replies that doubt is permissible, because there is a rumor abroad about massacres and spoliations and so it is lawful to ask oneself whether all that has happened is free from injustice. "Now," he writes, "the settlement of these matters does not belong to jurists, or at any rate it does not belong to them alone. As the barbarians are not subjects in virtue of any human law, matters concerning them ought to be examined from the point of view, not of human, but of divine law, in which jurists are not sufficiently versed to be able to solve the difficulties. It is a question for the forum of conscience, the department of the priests, that is to say, of the Church." "*Et cum agatur de foro conscientiae, hoc spectat ad sacerdotes, id est, ad Ecclesiam, diffinire.*"

The first edition of the *Relectiones theologicae* appeared at Lyons in 1557, from the house of Jacques Boyer; in 1565 a second edition was printed at Salamanca, by Juan de Canova; it bears the title *Relectiones undecim*; other editions are entitled *Relectiones theologicae tredecim partibus divisae*; the difference arises from the fact that two of the lectures are sometimes divided into *prior* and *posterior*. The edition of 1565 was supervised by Father Alonso Muñoz, of the Order of St. Dominic. It is dedicated to Don Carlos. The title-page states that the edition "has been purged of the prodigious and countless mistakes with which the first edition, that of Jacques Boyer, was filled." The prefatory announcement contains the complaint, made by Alonso Muñoz, with regard to the mistakes of this same edition; he writes that he had made a list of these mistakes when helping Domingo Soto in the correction of his book of *Sententiae*. We might add that to the copies of the edition of Muñoz the licentiate Mercado, censor of books at the court of the king, has annexed four pages of *Errata* with their corrections. In 1580 a correct edition was printed at Ingolstadt. In 1587 a fourth edition appeared at Lyons; it was the work of an unknown theologian. It is preceded by a eulogy of Franciscus de Victoria, in which the facts are recalled that Melchior

Cano and Domingo Soto were pupils of this teacher and that the kings of Spain submitted to him cases of conscience concerning the New World and the repudiation of Catherine of Aragon by Henry VIII. The edition was published at the expense of Pierre Landry; and some Latin verses written in praise of the last-named find a place at the end of other verses written to honor the author of the work and to give some idea of the work itself.

Still other editions may be cited—that of Antwerp of 1604 and that of Venice of 1626, a copy of which was used by Henry Hallam in connection with the interesting pages about Franciscus de Victoria which he wrote in his *Introduction to the literature of Europe in the fifteenth, sixteenth and seventeenth centuries*. Mention may also be made of an edition of Salamanca of 1680 and of an edition of Cologne in 1696, the latter being published under the supervision of Johann Georg Simon, professor of law at Jena and later at Halle. Reference may further be made to an edition of Madrid of 1765. Finally, it is proper to add that the Marquis de Olivart, who has rendered so many services to the science of international law, has published the two lectures on the Indians and on the law of war.

Other works of the author appeared after his death. These are the *Summa sacramentorum Ecclesiae*, printed at Valladolid in 1561, and a manual in Spanish for confessors, *Confesionario*, which appeared at Salamanca in 1562. Nicholas Antonio mentions the manuscripts, *Commentaria in universam Summam Theologiae Sancti Thomae* and *Commentaria in IV libros Sententiarum*.

The lectures with which we are now to be particularly occupied are entitled in the edition of 1565: *De Indis recenter inventis relectio prior* and *De Indis, sive de jure belli Hispanorum in barbaros, relectio posterior*. They are devoted to an examination of the titles which the Spanish might put forward in order to justify their domination in the New World. They were delivered in 1532 and are the first complete exposition of the question. It had undoubtedly already been brought before scientific opinion; thus we may mention Juan Lopez de Palacios Rubios, who undertook the defense of the oppressed Indians in a formal opinion given at the request of King Ferdinand. "The king," wrote he, "has added to his power the isles of the ocean commonly called the Indies and he has summoned into the truth of the Gospel the men and the uncultured peoples there resident. The question thus arises, what rights does the sovereign possess? The author has learned from a reliable source that the aborigines of the

countries just discovered by Christopher Columbus are men endowed with reason—mild, pacific, and capable of rising to the level of our religion. They have no private property, but cultivate certain land in common. They are addicted to polygamy, which results in the disorganization of their families. Are they free? Yes, for God has given liberty to all men; nevertheless they ought to hearken to the teachings of Christian priests.”¹

Already in 1494 the question of the aborigines of the New World had been submitted by the government to a commission composed of theologians and canonists who pronounced in favor of the generous doctrine, and a letter of Queen Isabella, dated February 10, 1495, showed that the arguments invoked had convinced the sovereign. Unfortunately the authorities of the mother country yielded to the claims and demands of the colonists who were animated by the spirit of lucre. Slavery existed in Spain. It was recruited not only from prisoners made in wars waged in the country itself against the Moors, but from the closing years of the fourteenth century there had been markets at Seville and Cadiz in which natives of the Canaries (Guanches, as they were called) were exposed for sale; at the commencement of the fifteenth century negro slaves had been introduced into Castille in the wake of the expeditions made by the Portuguese. The Spaniards were familiarized with slavery; it is not surprising that the abominable thought of reducing into slavery the aborigines of the New World should have been conceived, nor is it any more to be wondered at that negroes should have been transported to the West Indies. “Before the organization of the slave-trade was thought of,” writes Georges Scelle, “and from the first days of the conquest, negroes were certainly brought from Spain into America. It is notorious that at the end of the fifteenth century slaves were numerous in Portugal, in Spain, and especially in Andalusia: white slaves, Moors, Jews, and especially black slaves. Is it not reasonable to suppose that Spaniards took some with them? They transported them not only from Portugal and Spain, but from the islands of the Mediterranean, the Balearic Isles, Sardinia (where they were numerous), Madeira, and the Canaries, which had been conquered a little time before and at which the vessels touched when sailing for the West.”² *Repartinientos* and *encomiendas* were established, on which the Indians

¹VICENTE DE LA FUENTE, *Palacios Rubios: Su importancia jurídica, política y literaria*. In *Revista general de legislación y jurisprudencia*, vol. xxxvi (Madrid, 1870), p. 242.

²GEORGES SCELLE, *La traite négrière aux Indes de Castille; contrats et traités d'assiento* (Preface by Mr. A. PILLET) (Paris, 1906), vol. 1, p. 121.

were reduced to servitude, whilst certain populations were condemned to slavery. "The usage," writes Alexander von Humboldt, "of distributing the natives among the Spaniards, in order to facilitate the work of the mines, began in 1496. . . . By the Provision of December 20, 1503, the central government authorized compulsory labor, arbitrary taxation of wages, the right of transporting the natives to the most distant parts of the island and of separating them for six and then for eight months from their family. This was the *demora*. There was also the *mita*, the exploitation of the mines."¹ On December 20, 1503, a horrible decree was signed. "It allowed," says the illustrious savant just cited, "the reduction into captivity and the sale of the Caribs of the isles and of the mainland. . . . There were lengthy discussions about the shades of difference which distinguish the varieties of the human race; which populations were Caribs or cannibals, condemned to extermination or to slavery, and which were *guatiao*s, or Indians of peace, old friends of the Spaniards? In 1511 it was decreed that the Caribs should be branded with a hot iron, a barbarous custom which at the beginning of this century I found much in vogue among the black peoples of the Antilles."² The Hieronymites and the Franciscans were the first missionaries to visit the New World. Cajetan became master-general of the Order of Dominicans in 1508; he was full of zeal for evangelization, but the government would not allow the departure of missionaries belonging to this Order until September, 1510: then three brothers started, all belonging to the convent of San Esteban at Salamanca. Among them was Antony of Montesino, who returned to Europe in 1511 and took up the defense of the unhappy populations before a commission which Ferdinand assembled at Burgos in 1511.

In 1519 another solemn discussion took place before the young king, Charles, in which Diego Columbus, viceroy of the Indies took part. Bartholomew de las Casas made himself there the devoted advocate of the oppressed and thus inaugurated the long series of devoted services which won for him the glorious name of defender of the liberty of the natives of America.

In his *Relectiones* Franciscus de Victoria repudiates all theories, whether based on the alleged superiority of the Christians, or on their right to punish idolatry, or on the mission which might have been given them to propagate the true religion.

¹ALEXANDER VON HUMBOLDT, *Examen critique de l'histoire de la géographie du nouveau continent et des progrès de l'astronomie nautique aux XV^{ème} et XVI^{ème} siècles*, vol. III (Paris, 1837), p. 281.

²*Ibid.*, vol. III (Paris, 1837), p. 293-294.

The question whether unbelievers had *dominium* had been discussed by others. In order to refute it, Franciscus de Victoria, in the *Relectio de potestate civili*, cites the opinion of Richard Fitzralph, Archbishop of Armagh (whence his name *Armachanus*), who died in 1360. He tells us how the latter, in his book, *De paupertate Christi*, teaches that unbelief and even mortal sin prevent the existence of power, of the right of domination, and of jurisdiction, and that grace is the title to and basis of all power. In the *Relectio de Indis*, he cites again the opinion of the Archbishop of Armagh; he mentions the similar doctrine of Wycliffe; he recalls that before these two writers the Poor Men of Lyons (the Waldenses) had fallen into the same mistake; he adds that the Council of Constance condemned the proposition which Wycliffe had formulated as follows: "*Nullus est dominus civilis, dum est in peccato mortali.*"

Franciscus de Victoria raises the question of title by discovery, *inventio*, the only title, says he, which was invoked at the beginning of the enterprises in the New World, and the only title in virtue of which Columbus, the Genoese, sailed. But he points out that this title is a sufficient one only in connection with uninhabited regions, and that in the case in question the barbarians were, both alike from the public and the private point of view, the real masters of the country. "According to the Law of Nations," says he, "that which has no owner becomes the property of the seizer; but the possessions we are speaking of were under a master, and therefore they do not come under the head of discovery." It is not irrelevant to note that title by discovery was admitted by a number of Spanish and Portuguese authors, and that it was with the purpose of contesting its validity when applied to newly discovered lands that Grotius required occupation in addition to discovery. "*Invenire enim,*" wrote he in the *Mare liberum*, chapter 2 and chapter 5, "*non est oculis usurpare, sed apprehendere, ut Gordiani epistola ostenditur: unde grammatici invenire et occupare pro verbis ponunt idem significantibus.*" Adopting the view of Franciscus de Victoria, he writes, "*Invenire nihil juris tribuit, nisi in ea quae ante inventionem nullius fuerunt.*" He adds, "*Occupatio in mobilibus est apprehensio, in immobilibus instructio aut limitatio.*"

The professor of Salamanca repudiates the argument according to which the barbarians are under obligation to accept the Christian faith. He maintains that they are in no wise bound to believe merely because they have been told of the truth of the religion of Christ; according to him, if they refuse to become Christians after the proposition has merely been put before them, that does not entitle the

Spaniards to declare and make war on them. In order that there may be a just cause of war, those who are attacked must have committed some fault justifying the attack of which they are the object. That is the teaching of St. Augustine; it is the common opinion, *sententia communis*, not only of theologians, but also of jurists. But if the barbarians are asked to give a hearing to those who would speak to them about religion, they can not refuse without committing a mortal sin, nor can they neglect to examine the probable and reasonable arguments which are put before them. The question then is, whether the Christian faith has been so propounded and announced to the aborigines of the New World that they are bound to recognize it; this question Franciscus de Victoria refuses to answer in the affirmative: "There have been no miracles or manifestations," says he, "which ought to have convinced them; there have not even been examples of religious life; on the contrary, the Spanish have been guilty of numerous scandals, crimes, and impieties."

The great theologian then inquires into a delicate question which was also discussed by all the theologians and jurists who concerned themselves with the domination of the Spanish in the New World: can infamous vices and morals, and bloody practices, justify the making of war on those who are guilty of them? His teaching is that these do not afford the Spanish a just cause for establishing their domination by force of arms.

We may observe that the charges brought against the Indians were well founded. A passage from Bernal Diaz del Castillo, one of the companions of Fernand Cortez in his Mexican expedition, throws some light on this matter. Diaz quotes the language used by his leader to some caciques who implored his protection. Cortès, he writes, told them that they ought to give up idols and sacrifices to idols. "He added that they ought to purge themselves of the shameful vices which their young men indulged in so scandalously; and that, furthermore, there was every day a sacrifice before our eyes of four or five Indians whose hearts were offered to the idols, while their blood was scattered on the walls and their legs and thighs and arms were cut up for food, just like meat coming out of our slaughter-houses (I believe, too, that they sold them retail in their markets)." He ended by promising that "if they would abandon their evil customs and practices, we would not only become their allies, but we would also make them lords of other provinces."¹

¹*Histoire véridique de la conquête de la Nouvelle-Espagne*, written by the captain, BERNAL DIAZ DEL CASTILLO, one of the conquistadores; translation by D. JOURDANET (Paris, 1877), p. 121.

A historian confirms what has been said about the degree of civilization attained by the peoples of the New World. "The Mexicans and Peruvians," he writes, "were barbarians: that is, while possessing a material basis sufficient to support a low degree of civilisation, their habits of thought and life remained essentially savage. The Mexican warriors, the most advanced class found in America, were cannibals; in both Mexico and Peru regular human sacrifices formed an essential part of the scheme of life. Cannibalism was unknown in Peru, though it existed among the Indians of the forest districts to the eastward of the Andes (the *montaña*) and to the northward of Los Pastos, the northern limit of the Inca dominion: this may reasonably be ascribed to the fact that the Peruvians possessed large domesticated food-animals, which were wanting in Mexico. In most other respects the Peruvians were at a lower level than the Mexicans."¹ "In Mexico," continues the same author, "there existed a rudimentary commerce. . . . Slavery, an important element in the earliest advancement, had come into existence. . . . In Peru, so far as appears, commerce was unknown . . . nor was there any division of labor, except that between the warrior and the cultivator."

The author just cited gives some instructive details. "The 'weak males,'" says he, "are a noticeable class in ancient society, and abounded in the New World. Incapable of getting their living by the chase, the weak males would in the earliest savagery probably be killed and eaten, or, in the alternative, left to perish. In more advanced savagery they are allowed to survive, on the terms of systematically sharing the tasks of the women, which include the quest of wild vegetable food. From this the transition is easy to their becoming assistants, when the stage of partial agriculture has been reached, in the cultivation of the soil. Males of this class, wearing female attire, and performing the lowest functions imposed on the female sex, were commonly found, in the latest times, in the most advanced communities of America: those of the Mexican *pueblos* shocked the moral sense of the *conquistadores* scarcely less than did the hideous idols, the human sacrifices, and the cannibal feasts. Originally the weak males are of necessity celibates. As agriculture advances and labour is more and more in request, some of them, it would seem, are allowed to become the parents of others; their progeny, weak in physique, are well adapted to form the nucleus of the lowest group in the industrial class, the slaves. Tribes which have been largely depleted of their women, in the manner

¹EDWARD JOHN PAYNE, *History of the New World called America*, vol. I (Oxford, 1892), preface, p. vii.

above indicated, must necessarily rely more and more on their weak males for purposes of labour; their vigour will consequently diminish, and they will be ready for subjugation by stronger ones."¹

The illustrious theologian admits, however, that lawful titles may exist for the Spanish domination over the Indians. "The first title," says he, "may be called the title of natural society and of natural communication." "*Primus titulus potest vocari naturalis societatis et communicationis.*" In virtue of this title the Spaniards may travel and sojourn in those parts, but on condition always of doing no hurt to the inhabitants, and it is not permissible to hinder them from such travel and sojourn. The learned author invokes the Law of Nations, the *jus gentium*. In this connection we have the words, "*Quod naturalis ratio inter omnes gentes constituit, vocatur jus gentium.*" The passage is found at the beginning of the third section of the dissertation upon the aborigines of the New World. It has been asserted that the illustrious professor confined himself to a quotation of the well-known passage borrowed from Gaius by the Institutes of Justinian and that, quoting from memory, he had substituted the word *gentes* for the word *homines*, which in vulgar Latinity often meant "persons," "men," "nations." It is enough to read the development of his thought that Franciscus de Victoria gives in order to be convinced that he is dealing with *gentes* in the sense of "nations"; it is people whom he places side by side with one another in his argument; it is the word *nationes* that he uses after *gentes*; finally, it is the word *gentes* that he contrasts with the word *homines*. The examples which he gives in explanation of his thought are concerned with the relations of nations and with their intercourse. "Among all nations," he writes, "it is deemed inhuman to refuse a welcome to foreigners and strangers, unless there is some special reason to the contrary; it is regarded as humane and in conformity with duty to treat strangers kindly; now this would not be the case if strangers were doing a wrong in visiting a foreign nation." He adds that it would not be permissible for the French to forbid the Spanish to travel in France or even to dwell there, and that neither could the Spanish refuse to admit the French. May an observation be made? It is that it is puerile to challenge the use by a man of genius, such as Franciscus de Victoria was, of a terminology which expressed so perfectly his notion of a juridic order extending over the whole globe and composed exclusively of political communities. In the third book of *Pantagruel*,

¹EDWARD JOHN PAYNE, *op. cit.*, vol. II (Oxford, 1899), p. 17.

which appeared in 1545, Rabelais translates the expression *jus gentium* by "droit des peuples."

The author of the *Relectiones theologicae* asserts the right of the Spanish to carry on trade in the New World, to carry thither, for example, the wares which the natives lacked, and to bring thence gold or silver or other things which abound there. "The barbarian princes," says he, "can not prevent their subjects from trading with the Spanish, and the Kings of Spain on their side can not forbid the Spanish to trade with the Indians." He invokes the maxim that we ought not to do to another what we do not want done to ourselves. He asserts that the Spanish could not hinder the French from trading with Spain. He shows that nature herself has established a relationship between all men, "*inter omnes homines cognatio.*" "Man," he writes, "is not a wolf to man, as Ovid writes; he is a man." "*Non enim homini homo lupus est, ut ait Ovidius, sed homo.*" He adds that when things are common property, the barbarians can not prevent the Spanish from profiting thereby; he gives as illustrations the gold of the mines or of the streams and pearls of the sea or of the rivers. He admits that an effective sanction should guarantee the exercise of trade. Moreover, if the barbarians oppose the Spanish in their exercise of this right, the latter should first have recourse to reason and should show that they do not come with intent to hurt. If such a method is insufficient, and if the Indians employ force, it is lawful for the Spaniards to defend themselves, to repel violence, to build forts, to make war, showing moderation, however, and inflicting the least injury possible. If the barbarians persist, nevertheless, in their hostility, and if they try to destroy the Spaniards, the latter may make use of all the rights of war, may despoil their enemies of their goods, may reduce them to captivity and may depose their chiefs. Here, too, moderation and measure are requisite; as the doctors say in treating of war, the prince who wages a just war is in virtue of that very fact the judge of his enemies, may punish them in accordance with law, and may condemn them in proportion to their wrong-doing.

Franciscus de Victoria mentions some cases in which intervention with armed force is justifiable. Thus, the Indian chiefs may not persecute those of their subjects who have been converted to Christianity, nor purpose to bring them back to irreligion, and the same chiefs may not exercise tyranny nor enact tyrannical laws without giving the Spaniards the right to put an end to these abuses. He foresees the possibility of the aborigines voluntarily submitting to

the king of Spain and proclaiming him their prince; for such action unanimity would not, according to him, be necessary; a majority would suffice. Another lawful title would be the rendering of help to allies; it is thus that the Romans conquered the world, that is, by making war especially to aid peoples who had formed bonds of friendship with them.

The learned author treats more especially of the laws of war in the *De Indis, sive de jure belli Hispanorum in barbaros, relectio posterior*. He examines the four following questions: May Christians make war? What authority may declare and make war? What are the causes of a just war? What may be done to an enemy in a just war?

He cites texts of the New Testament which seem to condemn resort to force; but he teaches that these are counsels and not orders, and it is in this way that he refutes the doctrine of Luther according to which Christians may not take arms even against the Turks, because, if the latter should invade Christendom, it would be in accordance with the divine will. With Saint Augustine he teaches that Christians may engage in military service and may make war. He enumerates several grounds which render war lawful. For instance, defense against an enemy; recourse to arms against evil-doers and the seditious; the pursuit of enemies after repulsing their attack; the necessity of defending public safety; the preservation of general tranquillity against tyrants and oppressors.

As to the authority to whom is reserved the right to declare and make war, the author of the *Relectiones theologicae* observes that in a defensive war every man, even a private person, may repel force by force in order to protect his person and property, and he mentions in passing the opinion of authors who teach that a private person may not kill his adversary if by flight he could escape from the threatening peril. He gives definiteness to his thought by showing that there is a difference between the political community, *Respublica*, and the mere private individual: the latter may defend his person and his property, but he may not avenge the wrong nor retake his goods after they have been out of his hands for a considerable time, "*intervallo temporis*"; the *Respublica* possesses authority to defend itself and its members, and in addition to avenge wrongs. In this connection he recognizes that a prince's authority is like that of the State: "The prince," says he, "is the issue of the election made by the *Respublica*." He examines a little more closely the ideas of *Respublica* and prince.

"The State, properly so called," he writes, "is a perfect community, that is to say, a community which forms a whole in itself, which, in other words, is not a part of another community, but which possesses its own laws, its own council, and its own magistrates." As examples, he names Castille and Aragon and Venice. He adds that the fact that several principalities and perfect States are under the same prince is immaterial; in such a case, furthermore, each of these principalities and perfect States has the right to make war, a right without which they would be incomplete and consequently imperfect. However, as the Law of Nations and human law have a great influence here, custom may give the power and authority to make war, even when the *Respublica* is not perfect. Necessity itself may confer the right to make war; such would be the case if, within a kingdom, one city were to attack another, or one noble were to attack another, without intervention on the part of the king in the interests of order.

Franciscus de Victoria enumerates some grounds which would not justify recourse to arms. He states that diversity of religion is not a sufficient reason for making war; he teaches that neither the desire to aggrandize a realm, nor the glory or interest of the prince, can justify hostilities. "The lawful king," says he, "differs from a tyrant in that a tyrant organizes the government for his own profit, whilst the king has the public good alone in view."

The conclusion is that there is only one just cause of war—that is, the injury suffered. Not every kind of injury suffices; serious and atrocious ills, such as death, burning, devastation, must have been inflicted; slight injuries will not justify recourse to arms.

"What may be done in a just war?" asks the author. "Everything that is necessary for the defense of the public weal," is his answer. He concludes that it is lawful particularly to recover lost property, and its value, and to seize the enemy's goods as indemnification; he cites the case of a private person appealing to a judge and obtaining from him not only the restitution of the objects which had been carried off, but also the expenses incurred and the damage sustained; the prince who makes a just war is really acting as a judge. It is lawful to go even further to bring about peace and security; we may destroy the enemy's fortresses and at the same time construct others within his territory. "The aim of war," he repeats, "is peace and security; he who is waging a just war may do everything that is needful to obtain peace and security, which rank among the assets of humanity. In the same way that self-defense against internal foes

and bad citizens is allowed, so may measures be taken against external foes, and a conqueror may require the conquered to give hostages and to surrender his arms and ships." The author goes still further; he grants that after victory has been won the victor may exact vengeance for the wrong done to him and may punish his enemy. In order to show the truth of his proposition, he asserts that a prince possesses, not only over his subjects, but also over foreigners, the authority necessary to compel them to refrain from injurious acts; he invokes the Law of Nations and natural law which require the existence of an authority able to prevent the good and innocent from being harmed with impunity. He returns on several occasions to an idea which was frequently developed in the Middle Ages and which Grotius repeats, in his *De jure praedae commentarius*, citing these very *Relectiones theologicae*, and that is that when a political community commits a wrong it becomes the subject of the other political community; the conqueror becomes the judge of the conquered and thus the subsequent measures are justified; for otherwise it is impossible to find a justification for war, political communities having otherwise no authority one over the other."¹

The infliction of useless injuries in war must be guarded against. Innocent folk must not be attacked if the object of the war can be attained without harming them; laborers should not be despoiled if victory can be obtained without inflicting losses on them.

Children and innocent folk may not lawfully be killed; but may they conformably with law be led off into captivity? The author admits that the children and women of the Saracens are led into captivity and into slavery; as regards Christians, he observes that it has been conceded that prisoners of war do not become slaves and he concludes that even if the captivity of the children and women is indispensable to the attainment of the object of the war, they may not, however, be reduced to slavery, but must be offered for ransom; on this point also he recommends moderation.

"In the midst of a battle during both an attack and a defense," says Franciscus de Victoria, "it is lawful to kill all combatants, but when victory has been obtained and the danger is over, may all those who have carried arms be put to death?" His answer is that the nature of the wrong suffered and of the hurt sustained must be taken into account; all atrocity and inhumanity should be abstained from;

¹H. GROTIUS, *De jure praedae commentarius*, ex auctoris codice descripsit et vulgavit H. G. HAMAKER (The Hague, 1868), p. 29.

he adds that if, strictly speaking, prisoners of war who have borne arms may be put to death, nevertheless the custom and usage of war, *consuetudo et usus belli*, are such that after victory has been won prisoners of war are spared, unless they be deserters.

The author develops several propositions on the subject of booty. He supports the opinion of Silvester de Prierio, according to which one should content oneself with what is a sufficient and just reparation for the injury sustained. "If," says Franciscus de Victoria, "the French have sacked some unimportant town or place, the Spanish would have no right, even if they could, to ravage the whole of France." He declares himself against the pillaging and burning of towns; he admits that necessity may excuse cruel measures, but he lays emphasis on the barbarous acts committed on like occasions by the bloodthirsty.

A question arises in connection with what in our days is called military occupation. Is it lawful to occupy and to hold as long as may be necessary a field, citadels, or a town belonging to the enemy? Franciscus de Victoria answers affirmatively, but requires that the object be to obtain an indemnity, to guarantee security, to avenge a wrong, or to inflict punishment. He holds that necessity and the reason of war, *necessitas et ratio belli*, may justify the measures taken. He requires moderation and insists that at the end of the war the conqueror should retain only what will compensate for damage sustained and expenses incurred; he repeats the idea already enunciated: "*Superior iudex potest commode mulctare authorem injuriæ, tollendo scilicet ab eo civitatem, aut arcem. Ergo et princeps, qui laesus est, hoc poterit, quia jure belli factus est tanquam iudex.*"

There is another question, namely, whether tribute may be exacted from the vanquished. The author answers this question in the affirmative. It is lawful because it is a question both of recovering damages for an injury and of inflicting punishment.

Still another question: May we depose the princes of the enemy and set up others in their stead; may we arrogate the sovereignty to ourselves? According to Franciscus de Victoria the following maxim ought to prevail here, namely, that the punishment should never exceed the measure of the wrong which it purports to avenge.

Franciscus de Victoria ends by formulating three rules which may be stated as follows: In the first place, the prince may not seek occasions for war, he ought to try to keep at peace with all men; if he makes war, it should be in spite of himself. In the second place,

when war has broken out for just causes, the belligerent may not aim at the destruction of the enemy people; he may only have in view the defense of his own country in such a way as to attain peace and security. In the third place, when victory has been attained it must be used with Christian moderation; the conqueror should consider himself a judge pronouncing judgment concerning two States, one of which has sustained a wrong and the other has done a wrong; he should endeavor to see how satisfaction may be given while inflicting the least harm possible on the guilty political community, since among Christians the fault is generally imputable to the princes themselves and since it would be unjust to punish the subjects who are fighting for their princes and to admit the maxim which the poet formulates, that the Greeks ought to bear the consequences of the follies of their kings:

Quidquid delirant reges, plectuntur Achivi.

V.

In a study such as we have undertaken we must of necessity limit ourselves to the most important questions and must consequently neglect a series of special points which would nevertheless have been of interest. We have referred to the exquisiteness of form that Franciscus de Victoria was able to give to a work which he himself did not destine for publicity and which in his lifetime was not printed. We have noted the limpid clearness of his Latinity. We have attempted to give an idea of the substance of his doctrine and of the force of his reasoning. We will not emphasize the sentiment of humanity and charity which predominates in all his pages. A great deal of labor might be expended upon the authors quoted by the illustrious professor and thus it might be ascertained how vast were his studies and how profound a knowledge of the literature of his subject he had accumulated.

It is superfluous to say that the Old and the New Testament, and the Fathers of the Church—especially St. Augustine—are cited and that frequent quotations are made from Aristotle. Among the theologians and canonists whose opinions are mentioned figure almost all the known authors of the middle ages: Gratian and his *Decretum*; Saint Thomas Aquinas and his *Summa totius theologiae*; the commentators on the canon law; the commentators on Roman law, Bartolus at their head; then come writers less generally known, such as Altissio-

dorensis (who is William of Auxerre) and that other doctor of the thirteenth century, William of Paris. Furthermore, Richard Fitzralph, Archbishop of Armagh; John Wycliffe, William Ockham, and Jean de Jandun. Mention must also be made of Juan de Torquemada. A single detail shows the care and exactitude employed by the professor of Salamanca: he is referring to Juan de Torquemada and recalling that he wrote in favor of the Papacy when the bishops of the Council of Basel in 1431 affirmed the supremacy of the ecumenical council over the Pope. "*Contra quos*," says he, "*Cardinal de Turrecremata fecit opusculum, quod vocavit 'De decreto irritante,' in quo contrariam sententiam contendebat ostendere. Sed illum librum ego invenire non potui.*" Also among the authors cited are Cajetan, whom we have already mentioned, and Silvester Mazzolini. Franciscus de Victoria quotes principally their *Summa poenitentia*. Both belonged to the Order of Dominicans. Cajetan, as we have said, was born at Gaëta, whence his name. From 1508 to 1518 he was master-general of the Order of Dominicans. In 1517 Leo X included him in his famous creation of thirty-one cardinals. He died in 1534 and was accorded the reputation of the greatest theologian of his century. Silvester Mazzolini, born at Prierio in Piedmont, also a Dominican, was named by Leo X Master of the Sacred Palace. He died in 1523. It has been said of him that "he was a scholastic by race and a rigid disciple of St. Thomas." Franciscus de Victoria quoted also as an authority St. Antoninus, Archbishop of Florence from 1446 to 1459, who is especially known by his *Confessionale*.

It would also be interesting to refer to the citations of the *Relectiones theologicae* made by the great writers on the Law of Nations. To pass them all in review would be an arduous task; but some details are interesting.

High homage was paid to Franciscus de Victoria when numerous pages of his *Relectiones* were reproduced in the editions of the *Siete partidas*, as commented on by Gregory Lopez de Tavar.

Another tribute, equally great, was paid by Alberico Gentili. The illustrious Oxford professor did not measure his praises. In his *De jure belli libri tres* he is pleased to quote the opinions of the Spanish theologian and on one occasion, he writes, "*testatur doctissimus à Victoria.*"

We have mentioned that Grotius cites Franciscus de Victoria in the *Prolegomena* to his great work, *De jure belli ac pacis libri tres*, which appeared in 1625; as we have elsewhere seen, he also cited him

in the *Mare liberum*, which appeared in 1609 and which is in reality a chapter extracted from a work composed in 1604, *De jure praedae commentarius*. This remained in manuscript until 1868 and was then printed for the first time. In this last work the author often mentions the learned professor of Salamanca, especially on the subject of the characteristics of a political community, which must have its own council and authority.

In 1633 appeared the *Monarchia Messiae* of Thomas Campanella; this latter mentions the opinion of Franciscus de Victoria concerning the rights of the King of Spain over the New World; but, haughty ultramontane that he was, he attributes the legality of that title to the division made by the Pope between the sovereigns of Spain and of Portugal, a division emanating, according to him, from one who was both lord and judge. For Campanella the Pope is "the vicar of the Judge of the quick and the dead and of earthly princes and kings, the vicar of the King of kings, and of the Lord of lords."

In 1635 John Selden's *Mare clausum* was printed. Franciscus de Victoria is cited; but Selden combats his opinion.

We have mentioned the influence exercised in Spain itself by Franciscus de Victoria, who in a way revived the teaching of theology. He was in reality the founder of that celebrated school of Salamanca, which may be said to have taken its inspiration from the Order of Friars Preachers and which included the greatest of their names. "It is a truly extraordinary thing," writes a historian, "this assemblage of Doctors, of whom we do not know which to admire most. Spain had never before given so many incomparable Masters to the Order of St. Dominic, and never has since."¹

The influence of the author of the *Relectiones theologicae* continued, thanks to his disciples. A man of great worth, Hermann Conring, has done justice to him. He was born at Norden in Frisia in 1606 and was called to teach in the University of Helmstaedt; he died in 1681. Alphonse Rivier passes the following judgment upon him: "A universally learned man, theologian, physician, jurisconsult, Germanist and Romanist, publicist, diplomat, philosopher, a great wit, a small character." In his *Examen rerum publicarum potiorum totius orbis*, Hermann Conring devotes an important chapter to Spain. He speaks there especially of the development of scholastic theology brought about by the writers of this country and he observes that no country of Europe has produced more subtle writers. He invokes the testimony of

¹D. A. MORTIER, *op. cit.*, vol. v (Paris, 1911), p. 385.

Domingo Bannès, a member of the Order of Friars Preachers, and professor of theology at Alcalá, at Valladolid, and at Salamanca, who attributes to Franciscus de Victoria the merit of having started this powerful movement. "He acquired his learning in Paris," said Bannès, "but he far surpassed his masters." Conring tells us that Bannès traces the cause of the progress effected by the Spanish in scholastic theology to the sad gravity which, according to him, distinguishes them, and he supports his opinion. He pays a magnificent tribute to Franciscus de Victoria. "There is," he writes, "a work of his entitled *Relectiones*, which may be extraordinarily useful, not only for theologians, but also for jurisconsults, because it discusses moral topics with the greatest care and subtlety, wherefore I always read it with admiration."¹

The professor of Helmstaedt insists on the fact that Franciscus de Victoria was the very first to raise moral problems in juridic questions; he adds that the Spanish have continued to study theology and philosophy in this way and that similar works are vainly sought amongst the French or Dutch or Germans, whose genius is not suited to this study. "Often," he adds, "I am surprised that Hugo Grotius was able to make progress in this kind of work so much greater than that ordinarily made by the other authors. But his genius was curious. However, if he excelled in philosophy and produced the incomparable book, *De jure belli ac pacis*, he owed it to his reading of the Spanish jurisconsults, Ferdinand Vasquez and Diego Covarruvias, who had in their turn made use of the work of their master, Franciscus de Victoria. He cites them frequently. Spanish legal science differed much from French legal science. In France we can praise only Cujas, Hotman, Bauduin, and others who have given their works a literary finish, but in Spain natural law is much better cultivated; there is indeed no other place where it is so happily taught. And all this Spain owes to Franciscus de Victoria. The same consideration applies to philosophy; it is moral philosophy that is most studied in that country. Let him who aspires to the most exact knowledge of moral philosophy procure Spanish authors. Compared with the Spanish, the Germans and the French are naught. It is for the reason pointed out by us that the Spanish have been so successful in the cultivation of metaphysics; here, too, a predisposition to sadness and seriousness is requisite. In physics they are veritable children, because the study of physics is a gay affair; accordingly they cultivate only the saddest

¹HERMANN CONRING, *Opera* (Brunswick, 1730), vol. IV: *Examen rerum publicarum potiorum totius orbis*, chap. I (*De republica Hispanica*), p. 77.

side of it, that is to say, medicine, and they neglect the agreeable side. For the same reason the study of the humanities languishes in Spain. Among its numerous writers scarcely one can be praised for the cultivation of belles-lettres. Mariana and Barclay have both noted this fact. Among theologians may be mentioned the Ciceronian, Melchior Cano. When, on the initiative of the Jesuits, Philip IV founded a royal academy at Madrid, there was not found in Spain—not even among the Jesuits—a single writer who was skilled in belles-lettres. In this country there is only one modern historian, Mariana.”

The authors on international law of the nineteenth century have not failed to pay homage to Franciscus de Victoria. In his *History of the Law of Nations in Europe and America*, Henry Wheaton mentions him in an exceedingly laudatory manner and devotes seven pages to an analysis of the two *Relectiones* that relate to the Law of Nations. Another great author, James Lorimer, a legal philosopher and a jurist, has praised the Spanish writers of the sixteenth century in general, and Franciscus de Victoria in particular. “From these few observations,” he writes, “you will have no difficulty in perceiving the extreme injustice of the manner in which, down to our own time, it has been customary to speak of the scholastic jurists. Learned as Barbeyrac was, the few perfunctory sentences which he devotes to them in his celebrated preface to Pufendorf—which he adopts in his preface to Grotius, as serving for both works—are no exception. The fact is, that ever since the Reformation the prejudices of Protestants against Roman Catholics have been so vehement as to deprive them of the power of forming a dispassionate opinion of their works, even if they had been acquainted with them, which they rarely were.”¹

The eminent Oxford professor, Thomas Erskine Holland, has also paid homage to the celebrated Spanish writer in one of the introductory lectures of his course, a lecture which is reprinted in the remarkable *Studies in International Law*, published in 1898. Another English author, Thomas Alfred Walker, in his *History of the Law of Nations*, which appeared in 1899, has given several pages of analysis to the *Relectiones theologicae*. Finally, in a collection edited by the learned Antoine Pillet, a French professor, Joseph Barthélemy has contributed an elaborate study of the life and work of Franciscus de Victoria.²

¹JAMES LORIMER, *The institutes of the law of nations*, vol. I (1883), p. 71.

²*Les fondateurs du droit international, leurs œuvres, leurs doctrines*, with an introduction by A. PILLET (Paris, 1904), p. I et seq.

Here our work may end. We have tried to relate the life and activity of one of the great precursors of Hugo Grotius. Because of the vigor of his reasoning, the nobility of his sentiments, and his profound love of mankind, Franciscus de Victoria is still in our day an imposing personality. He was modest, simple, good; a sturdy defender of truth and of justice. Whoever reads his writings esteems their author, and that is why I venture to bring to his illustrious name my tribute of admiration.

ERNEST NYS.

British Museum, August 20, 1913.

DE INDIS ET DE IVRE BELLI RELECTIONES

BEING PARTS OF

RELECTIONES THEOLOGICAE XII

BY FRANCISCUS DE VICTORIA

Primary Professor of Sacred Theology in the University of Salamanca.

THE TRANSLATION

BY JOHN PAWLEY BATE, LL.D.

Reader of Roman and International Law in the Inns of Court, London.

TRANSLATOR'S NOTE ON CITATIONS.

1. *Bible*.—The references made in the original to the Vulgate are given in the translation in terms of the English Authorized Version of the reign of James I.

2. *Canon law books*.—The references in the translation are given in the following abbreviated manner: (a) *Decretum*, pt. i, by number of Canon and number of *Distinctio*, e. g., can. 6, Dist. 96: (b) *Decretum*, pt. ii, by number of Canon, number of *Causa*, number of *Quaestio*, e. g., can. 41, C. 7, qu. 1: (c) *Decretales*, by *X* (for *extra Decretum*) then number of book, title and chapter, thus *X*, 5, 6, 6: (d) *Liber Sextus*, by the number of book, title and chapter, followed by "in vi," thus 5, 2, 19 in vi.

3. *Civil law books*.—The references in the translation are to Mommsen's edition of the *Corpus Juris Civilis*.

In addition to the above-named books the author cites or refers to the writings of the following:

Adrian VI, Pope.
 Almain, Jacques.
 Altissiodorensis (*i. e.*, of Auxerre), Gulielmus.
 Ambrose, St.
 Anconitanus (*i. e.*, of Ancona), Agostino Trionfi.
 Andreæ, Joannes.
 Angelus of Chiavasso.
 Antoninus, St., Archbishop of Florence.
 Aquinas, St. Thomas.
 Archbishop, the, *see* Antoninus
 Aristotle.
 Armachanus (*i. e.*, of Armagh), *see* Fitzralph, Richard.
 Augustine, St.
 Baptista de Salis.
 Bartolus.
 Bernard, St.
 Cajetan, Cardinal (Thomas de Vio).
 Cicero.
 Conrad.
 Dionysius Areopagiticus.
 Durandus.
 Eymerici, Nicholas.

Fitzralph, Richard, Archbishop of Armagh.
 Gandavensis (*i. e.*, of Ghent), Henricus.
 Gerson.
 Hostiensis (Henry of Susa, Cardinal, Bishop of Ostia).
 Hugo, *see* de Sancto Victore.
 Lombard, Peter.
 Luther, Martin.
 Natalis, Herveus.
 Ovid.
 Paludanus, Petrus.
 Panormitanus (*i. e.*, of Palermo), Nicolo Tudeschi.
 Parisiensis (*i. e.*, of Paris), Gulielmus.
 Sallust.
 de Sancto Victore, Hugo.
 Scotus, Duns.
 Sylvester of Prierio.
 Terence.
 Tertullian.
 de Torquemada (Turrecremata), Juan.
 Vergil.
 Waldensis (*i. e.*, of Walden, Essex), Thomas Netter.

(The Title-Page of the Edition of 1696)

THE RELECTIONES IN MORAL THEOLOGY OF THE
VERY CELEBRATED SPANISH THEOLOGIAN,
FRANCISCUS DE VICTORIA,

comprised in two volumes, in the order shown overleaf,

Formerly published at Ingolstadt, and now,
because of the lack of copies and the nobility of their contents,
revised and furnished with a twofold index by the toil of

JOHANN GEORG SIMON, J. U. D.,
Counsellor and Professor of Halle.

“A work of the utmost utility alike to jurisconsults and to theologians.” [Conring]

COLOGNE AND FRANKFORT,
At the cost of AUGUST BOETIUS.
1696.

(Overleaf of the Edition of 1696)

VOLUME I.

- I. On the Power of the Church, part 1.
- II. On the Power of the Church, part 2.
- III. On Civil Power.
- IV. On the Power of the Pope and Council.
- V. Part 1, or on the Indians lately discovered.
- VI. Part 2, or on the Law of War.
- VII. On Marriage.

VOLUME II.

- VIII. On the Increase of Charity.
- IX. On Temperance.
- X. On Homicide.
- XI. On Simony.
- XII. On the Magic Art.
- XIII. On the Obligations of a man attaining the use of reason.

[Of the above, only Relectiones V and VI are pertinent to the objects of this work and the others are therefore not included.]

TO THE CHRISTIAN READER, GREETING¹:

It having been decided to reprint here, at Ingolstadt, these thirteen *Relectiones* of Franciscus de Victoria, who was by far the most learned theologian of the highly flourishing University of Salamanca within the memory of our fathers, I undertook the task of correcting them at the instance of certain doctors, who, on account of the celebrity of his reputation, were glowing with fervent admiration of so great a man. Now in this business so entrusted to me, I see that there are a few items concerning which it is worth while that you have an accurate account: these are, the amount of labor and toil expended by me in correcting and preparing the publication; the character and greatness of the man who composed these *Relectiones*; and the amount of advantage and profit which the perusal of them will bring even to Germans, who seem to be somewhat strange to the gymnastic and scholastic form of discussion therein employed.

Well, reader, you will scarcely believe how much labor we have expended on this business, unless either you make a careful comparison of this edition of ours with the Lyons and Salamanca editions or realize in some fashion by our description the character of each of these editions. For I had at first the use of the Lyons edition only, in clearing the blunders from a good part of the first volume, and the printer had already finished striking off the first five sheets of it, when, beyond my hope and belief (for I did not think such a thing existed here), a copy of the much more correct Salamanca edition came into my hands in the manner following: The Reverend Father Gregorius Rosephius, a preacher of Augsburg,² when on a visit to us, had perceived the extremely wearisome nature of the task, which I had undertaken in correcting the Lyons copy (I seemed indeed to be cleansing the Augean stable), and had noticed that some of the passages pointed out by me were hopelessly corrupt, and by his courteous intervention with the well-born gentleman, Marcus Fugger (on whom the desire of the public welfare had such a hold), he procured me the loan, from the well-known library of the Fugger family, of a copy of the Salamanca edition. How faulty and corrupt the Lyons copy was, I would rather that you, my reader, should learn from the Letter to the Reader, which Brother Alonso Muñoz placed at the beginning of the Salamanca copy, than from me. A part of that Letter it has seemed advisable to insert in this, because it, too, contains the praises of the author, and because some of the disciples of that most erudite man are mentioned by name there.

¹This preface, which Simon prefixes to his edition, is a copy of the preface to the edition which appeared at Ingolstadt in 1580, and is in the form of a letter "To the Christian Reader" from the editor, who describes himself as "one of the Doctors of Sacred Theology at Ingolstadt." The black figures in the inside margin of pages 115-187 indicate the corresponding pages of the Photographic Reproduction included in this edition. The pages of the Photographic Reproduction corresponding to pages 105-114 are unnumbered in the original.

²Or some other "Augusta."—TRANSL.

"When, honest reader, I was busy at Salamanca, trying to help Brother Domingo Soto with the correction of the proof of the fourth volume of the *Sententiae*, then in the press, there appeared a little book with a most imposing title, but containing countless horrible misprints, absurdities which were disgraceful and insulting to the author as well as to the whole theological school. It made one aghast to behold in the tiny body of so small a book so unbelievable an off-scouring of close-packed blunders, and ashamed and sorrowful that rascals should seem to have such license towards the master-pieces of most distinguished men, and with impunity, too. This was the title of the book: "The Relectiones of the Reverend Father, Brother Franciscus de Victoria, of the Order of Preachers, formerly Primary Professor of Sacred Theology in the University of Salamanca." You observe how fair and full of promise the inscription is; and indeed for this, in Pliny's words, its bail could be forfeited.

"When, then, at Salamanca I came across this very book, newly issued from the press, I began to read it with the utmost avidity, and I had barely cast my eyes upon the first page that presented itself, when, lo, there lighted on my very eyes some impious error on the topic of Simony, which stirred my spleen marvelously. I made no tarrying, however, the matter being one which could easily be detected by anyone of even moderate learning; I go on, and the farther I went, the more mistakes I kept finding, and even some mutilations. Perceiving that the thing was by no means to be borne, I laid it before the very Reverend Fathers, Brother Domingo Soto and Brother Melchior Cano, who prompted me to take on myself my present charge, namely, the correction of that book according to the most exact copies. Master Franciscus Sanctius, Canon of the Cathedral of Salamanca and Moderator of the chair of Moral Philosophy in the gymnasium likewise of Salamanca and therefore administer of the Holy Inquisition in the business of examining books for admission or rejection, learnt of this. He came to Brother Domingo Soto to discuss the matter with him, and at the suggestion of the same Franciscus I was summoned and received afresh from the twain the injunction "to adorn this Sparta."

"Now, although I was aware how unpleasant a business it was, how hard and wearisome the affair, how inglorious the labor of correcting and restoring the monuments of others, especially those so ulcerous, so altogether deranged, so piteously (I had almost said) and hostilely regarded, as these were, yet, moved by the authority of my preceptors as well as induced by love of a very fine work and of its author, Victoria, who was also my dearest of teachers, I put my shoulders under a burden which I have loved."

And then at the close of the same letter Muñoz adds this paragraph:

"Enjoy, then, in your good fortune the fruits of our vigils and toil, whereby it has come to pass (without boasting) that instead of the muddy work, not to say the mud, of yore, you have something clean and clear, and gilded and resplendent all over, as you will easily discover by experiment, if, wherever the book be opened, you will make a comparison and will consider the difference between this book, which we are handing to you, and the book which we have corrected, namely, the one which Jacques Boyer struck off at Lyons in the year of our Lord 1557. Before it none was printed, and after it no other printers have ventured to reprint it, fearing (howsoever small it is) this our diligence, of which they are not unaware."

From this, my reader, you will perceive, without any words of ours, how faulty and corrupt was the Lyons edition, and how much more correct is that of Salamanca (of the year 1565, to wit). But I do not know by what

ill-chance it has happened that into this Salamanca edition, so clean, so clear, so gilded, have crept blunders and faults neither few nor trivial. It labors at times under the same faults as the Lyons edition; sometimes under faults of its own, which needs must be corrected either by reference to the Lyons edition or in some other way. What, then, my reader, was I to do, there being so many faults even in the Salamanca copy, in which I had placed my hopes of correcting the other copy? Was I to make a transcript of the whole of the Salamanca copy (for the well-born man who had loaned it to us had stipulated that it was not to be entrusted to any printer or have any marks made on it) and send the transcript to the printer to be printed? But I had no leisure for that, and if I had had, it would not have helped towards a correct edition of the work because of the faults and blunders, which, we have said, had crept into the edition in question. Was I to correct the whole of the Lyons text, just as I had corrected it in part, before I had that of Salamanca, and so corrected give it to the printer? That, too, was impracticable, because the former was blemished by many more and graver faults than the latter, and because, unless we corrected the former by the Salamanca text, we should seem to have borrowed the last-named to no purpose.

Accordingly I settled the matter as follows. From the place where the printer had stopped printing (he happened to have stopped after the fifth sheet, usually marked by the letter E) I and a wise colleague, whom I had joined with me, made a very careful collation of the two texts, and to the best of our ability, corrected that of Lyons, which was to be sent to the printer, by that of Salamanca, wherever the latter had no obvious error. But wherever a serious and manifest fault occurred in the Salamanca text (for I thought that I could rely on my own judgment in the removal of the more trifling blunders) I took counsel with the most skilful theologians and philosophers, in order that the fault might be corrected by the common judgment of many, after considering in the two copies all the words and opinions of the author, which seemed to conduce to an understanding of his mind. It happened sometimes that all of us together could hardly find a principle or method for the restoration of some corrupt passage. Let any incredulous person take the two editions and read just one passage in the "Relectio on the Increase of Charity," about No. 10, and if he can extract therefrom the sure meaning of the author while retaining the identical words, then he may indeed charge us with falsehood or ignorance.

When, then, on this principle we had collated the two editions right to the end, we carefully corrected by the Salamanca text the five sheets also, which, we have said, had been struck off, in order that nothing might be wanting for the absolute and complete expurgation of the entire work. As we could not remove from these sheets themselves the errors which occurred in them, we noted them at the end among the rest of the Errata.

This indeed was a big and tedious task, but bigger and more tedious was that which we undertook, in regard of the whole work now emended according to the Salamanca text, of simply correcting, repurging, and illustrating it with scholia throughout. This was the more toilsome and difficult in proportion as the two editions were more corrupt and as the author—owing to the strength of his very acute intelligence, which, according to the wont of highly learned men, he directs upon the matters before him—seems less careful of his words, less mindful of order or of the things initially propounded for discussion. Hence it happens that sometimes he might appear to use an overconcise and scholastic mode of discourse; sometimes, to omit answering arguments which have been propounded; sometimes, to give one answer to many things at the same time; sometimes, when discussing a mooted question or refuting an argument, to insert questions and doubts which he meets upon his way; sometimes, to omit altogether some of the questions to be discussed, which he has propounded at the beginning of the *relectio* (as is evident in the “*Relectio on Marriage*” and the “*Relectio on Temperance*”).

Nor did our labor stop here, but in the third place we had to go over the whole work after it was in type, both to make a complete alphabetical index and to correct the misprints. While attempting to accomplish this latter task, we bestowed equal diligence upon the former, so that we have left in this edition of ours a text much more correct than had previously been published, by the removal of a large number of faults and blunders, which either had come in afterwards or had not previously presented themselves. Of these, a few indeed, but the more important, however, we have noted down among the Errata at the end of the book. From this, my reader, you will understand that not all the errors noted at the end of the book are due to either the carelessness or ignorance of the printer, but they may have crept in (especially in the first five sheets, because we did not have the Salamanca copy) either because of the corrupt state of both the editions which we used or even because of our own inability to make an exhaustive scrutiny and examination. We have, however, left untouched not a few passages, which seemed susceptible of emendation, had we labored on them, because they ran in that way in both editions or at any rate in the Salamanca edition and in order that no one might charge us with excessive freedom in the correction of another's work.

About the author of these *Relectiones*, I have ascertained this much: that he lived in the reign of the Emperor Charles V, King of Spain; that he belonged to the Order of St. Dominic; that he was a shining light and ornament of that Order; that he flourished especially in the praise accorded to a very acute intelligence, to judgment, and to sound doctrine, and in the number and glory of his most learned disciples (some of whom are very well-known because of their published books, such as Melchior Cano and

Domingo Soto); further, that his universal authority was so great and his name so outstanding that he seemed to his hearers a second Pythagoras; that he was reckoned by the most learned theologians and philosophers to be the alpha and prince of the theologians and philosophers of his day, and that (I) *the Catholic Sovereigns of Spain brought to him cases affecting their conscience (such as (a) that of the conquered provinces of the New World, and (b) that of the divorced wife of the King of England, both of which are discussed in this book), desiring instruction on these matters from him especially, with the result that he himself, relying on this very authority, of which he was not unaware, gave the freest judgment, just as the principles of his conscience demanded, in the causes of Sovereigns and even (II) of the Supreme Pontiff. When I carefully consider this, I am wont to doubt which of the two is the more praiseworthy: in this man, a certain freedom of speech, buttressed by his authority and surpassing erudition, or, in the Sovereigns of Spain and even in the Supreme Pontiff, a singular moderation of mind and a desire to learn and uphold justice and truth. Hence it comes about that with equanimity, aye, pleasure, they silently allow themselves to be chided by this learned man and to be rebuked (when the principle of the doctrines which he had to deliver so requires).* For those extremely wise Sovereigns bear in mind what another Sovereign has left in writing: "The righteous shall rebuke me in compassion and shall upbraid me; but the oil of the sinner shall not fatten my head."¹

Wherefore it is an injustice for the heretics of our day to ridicule the monastic orders everywhere on the ground that they are rude and unlearned and flatterers alike of Popes and princes. Surely, if these heretics be compared with our Franciscus de Victoria, they will neither be worthy of the name of theologian nor found to say or write aught in conformity with truth, but in everything to fawn on princes. Now how great a debt the University of Salamanca, and therefore Spain, owes to this man, the aforementioned Alonso Muñoz, in a Letter to the Most Serene King Charles of Spain, testifies in the following words:

"The whole of Spain owes much to this excellent man, for, while he has deserved well of it on many grounds, he has especially done so in respect of this, that whereas Theology among the Spaniards lay in confusion and covered with dust, or rather with mud, tattered and torn, dumb and almost tongueless, it was restored by his exertions alone to clarity, splendor, and its native beauty, to purity and dignity, comeliness, grace, and soundness, as if in virtue of a tardy postliminy. In witness of the truth of this are not merely the *centuriæ*,² but also the *Iliads*³ of his disciples, whon his school has poured out in all directions."

*The part between these asterisks is marked as a quotation in the original.—TRANSL.

¹Ps. 140 (Vulgate).

²Such as were compiled by people like the Magdeburg centuriators (whom the writer would naturally dislike).—TRANSL.

³Reading *Iliades* for *Yliades*. 'Ιλιάς has a way of being used in Greek as equivalent to a vast string of things, e.g., 'Ιλιάς κακῶν.—TRANSL.

Now, my reader, lest the word *relectio* be unfamiliar to you, you should realize that at Salamanca it meant a kind of theological exercise not very unlike those disputations which are known to have been in vogue in the days of our ancestors in the most celebrated universities under the name of *quodlibeticae quaestiones*. The seemingly more difficult of those *quaestiones*, which had been discussed in the daily prelections of a whole year, were also reconsidered in these *relectiones* in a public assembly of the most learned, and by the same doctor, so that they might be much more accurately decided than theretofore and receive as it were the finishing touches. And since our author was, beyond controversy, the prince of theologians of that time, especially among the Spaniards, you will perceive that whatever conclusions have been arrived at after discussion in these *Relectiones* have all been tested and weighed by the judgment of the most learned theologian, as if in the scales of the most skilful goldsmith, and that, therefore, they ought to adjudged much more solid and firm than the things superficially discussed by the heretics of today, men, forsooth, devoid of learning and judgment.

Now, although these *Relectiones* may seem suited to the bent of Spaniards rather than of Germans, seeing that the former prefer to cultivate a gymnastic and concise manner of theologizing and the latter a sedate and rhetorical manner, yet if we look at both the manner of disputation and the fruits of the learning handed on in these *Relectiones*, it seems that they will bring much advantage and profit to Germans. For if we attentively consider that from the time when the waves of false opinions and heresies began here to buffet the ship of the Church, Theology has been denuded by almost everyone (fearing, perhaps, the insults directed by heretics against the philosophers and theologians of the School) of the protection and arms of the philosophical and theological school and been called back into a rhetorical, or rather, a grammatical mode of reasoning, and that for this reason either those who have thus approached sacred literature with unwashed hands have made no further advance in that pursuit than has been made by a clever grammarian or rhetorician or that, because they are ignorant and unaccustomed to the exercises of disputation and judgment, wrong opinions have either been begotten or defended, we shall, above all, be led into that opinion (into which Cicero testifies that he was led in a similar case) and come to think that theological doctrine is not of much good to the Christian Republic without eloquence, but that eloquence without doctrine brings very often over much hurt, never any good. And so if anyone (to use the words of that same Cicero with little alteration) omits those most befitting and unerring studies of theology and divine doctrine and spends all his energy upon the exercise of speech and writing, he is being bred to be useless to himself, a dangerous citizen of his country and a parricide of his Mother Church. He, however, who so arms

himself with eloquence as to be incapable of fighting against the good of his country and the doctrine of the Church, but able to fight in their behalf, will in our view be a man of the highest usefulness alike to his own and his country's interests, the best-affected citizen, and the dearest son of his Mother Church.

I have mentioned these matters, my reader, not because I think that, in their mode of transmitting theology, either this Franciscus de Victoria and the other Spaniards are deficient in grace or in faculty of speech or the Germans are devoid and destitute of solid doctrine (for I know both that this Victoria in his *Relectiones* is eloquent to the limit of his theme and that other Spaniards, especially when they are pleased to drop the scholastic habit of speech, can both speak and write with polish, and also that no small number of Germans have been perfectly trained in the doctrines of philosophy and theology, but because I think that German theologians will best consult their own country's interests, if they studiously conjoin the solid and scholastic kind of theologizing, such as is that of this Victoria and of the Spaniards in common, with that sedate and rhetorical kind, which they themselves generally adopt.

Further, the fruits of these *Relectiones* are both abundant and manifold, and both they who are teachers of others and all other persons will be able to gather them. This indeed we can make plain by reference to the *Relectiones* one by one.

In the first *relectio* it is shown that there are in the Church two distinct powers, the ecclesiastical and the civil, and that the former is stronger than the latter; accordingly, the false doctrine of the Lutherans and of those who equate the two powers or subordinate the ecclesiastical to the civil is overthrown.

In the second *relectio*, which also bears the title "On the Power of the Church," two dogmas of the heretics are refuted; the one, that the strictly ecclesiastical and spiritual power is initially and of itself existent in the whole of the Church universal in the same way as the civil power is in the civil State; and the other, that all Christians are priests, and all equal, and that there is no order and are no certain grades in ecclesiastical power.

In the third the necessity, origin, and force of the civil power and its authority are so established and confirmed that the pernicious dogma of Luther, which has brought destruction to an almost innumerable number of simple folk, falls to the ground of itself.

The fourth *relectio* contains a very fine discussion "On the Power of the Pope and Council," which, though it may seem of less use to those engaged in strife with heretics or tainted with heretical practices, is nevertheless useful and fruitful even for them. For, while the scope of the general power alike of the Pope and of the Council is explained, at the same time the sovereignty of the power and authority of each, but in its own measure, is

asserted. Now, if the authority of the Supreme Pontiff and Councils were established and were in the ascendancy among the Germans, it would obviously result both that no sects would be propagated among them and that all heresies would be dispelled, not otherwise than darkness before the rays of the sun.

The fifth *relectio* is entitled "Of the Indians" (that is, of the barbarians of the New World commonly called Indians). Now, although this appears to be the answer given by the author to the Catholic Sovereigns of Spain, it nevertheless contains many things useful and wholesome for everyone who is in a case the same as or like to that in which those Sovereigns were. Among these things are: how a person in doubt on any matter of conscience ought to take the advice of those who are learned and wise in that kind of matter; how he ought to follow what they have laid down, even if, as may happen, they are in error; and how many unlawful, how many lawful, titles there may be, by which those Sovereigns might claim to reduce foreign provinces and populations into their power. After a careful discussion and settlement of these points, the conscience of those concerned is openly taught what to abstain from doing in this business and what to do.

In the sixth, "A Further Relectio on the Indians, or on the Law of War," much, and this useful, instruction is delivered, which ought to be observed by kings and princes, in order that they may make or wage war in a lawful manner, and by all other persons, in order that they may in lawful manner serve as soldiers under their own or a foreign prince. Meanwhile a refutation is given of that dogma of the heretics, that it is not lawful for Christian princes to fight either with other Christians or with the Turks.

In the seventh, which seems to be the author's answer in the cause of the Queen of England who had been divorced by the King, her husband, a strenuous attack is made upon that false dogma of the Lutherans that all the degrees forbidden in Leviticus 18 and 20 are still forbidden by divine law. The heretics, further, get a shrewd knock, when it is convincingly shown in this *relectio* that matrimonial causes are rightly and properly brought before ecclesiastical judges.

The eighth, in which the topic is "The Increase and Decrease of Charity," contains a discussion pertaining indeed rather to the school of theologians than to a public assembly or to other folk, yet one very helpful to these same theologians, both in the sharpening of their wits and in its harvest of very beautiful and genuinely theological matter. We may also add that here there is a condemnation of that conjecture of the heretics that all righteous persons are equals in charity and grace before God and that, as Luther asserts, the ever Blessed Virgin, the Mother of Christ, in no respect surpasses any woman from the midst of the people.

The ninth contains a varied and interesting disputation "On Temperance," which will probably be pleasing to most folk here because of the controversy about the pleasures of the table. Those barbarians, the cannibals, are here condemned, and those who sacrifice men to God. There is also a defense of the Carthusians, who perpetually abstain from flesh, and of other religious, who seem to shorten their days by other forms of abstinence. We should have had in this *relectio* more numerous defenses against heretics, had not the author absolutely passed over one or another of the *quaestiones* propounded at the beginning.

The tenth, in which there is a discussion "On Homicide," is of use in many ways; but more conclusions are arrived at in it than we can set out in summary form.

The eleventh, containing a discussion "On Simony and the Punishment of Simoniacs," may seem to be not only useful, but even necessary here, where this stain is so inveterate and so wide-spread as scarcely to be reckoned a vice. Nor are the heretics free from this vice, though cut off from the body of the Church.

Not less useful and necessary is the twelfth, in which there is a disputation "On Magic," seeing that we have often heard by sure report, nay, we assuredly know, that, after the new Gospel had been introduced by Martin Luther, it obtained such a hold especially in the regions of the North that, in proportion as the doctrine of Christ was gradually failing and dying away in the minds of men, so Magic was gradually gaining in strength, with the result that, when the former was quite extinct, the latter seemed to reign alone with her partner, Heresy. Nor are the Anabaptists and Calvinists altogether destitute and devoid of this Magic and of the Pythoness' breath, nay rather they breathe that breath in their words, writings, manners, face and eyes.

In the last *relectio* a topic is treated which is most worthy of a Christian, namely, what are the obligations of everyone on first arriving at the use of reason. For what more befitting can be taught or learnt by a man, and especially by a Christian, than the condition or manner, in which he should turn himself to God as his ultimate end and highest good, for the enjoyment of which he has been created?

It is now your part, Christian reader, to receive with gratitude and pleasure this work—on the correction of which we have bestowed so much toil and time, which has been lucubrated by such and so great a man, and which contains doctrine so sure and solid, so useful and necessary—and by reading it and meditating on it rouse your zeal for the knowledge of the highest things. It will be an abundant recompense to us, if by reading it you become both wiser and better. Farewell.

*At Ingolstadt, on the day of St. Lawrence, Martyr,
in the year 1580.*

A POEM TO THE READER IN PRAISE OF THE WORK
BY AN UNKNOWN AUTHOR.¹

What a number of things, O reader, this book, small as it is, contains—laws, Popes, and sacred theologians.

ANOTHER EXTEMPORANEOUS POEM COMPRISING AS BRIEFLY AS POSSIBLE
THE SUBJECTS OF BOTH VOLUMES.²

What are the powers of Holy Mother Church and of the Popes this book teaches; what is the power of the Fathers when duly assembled in their Great Council; at the same time, too, the civil laws and the laws of war (for even Mars is not lawless); and it treats of the lawful bed and marriage of men. This, Franciscus de Victoria, is the first part of thy work, and that is so far, too, the cost of our gratitude for thy deed.

What a delight of piety and how fair a virtue it is to have abstained from good things and to impose a law on luxury, but how great an impiety to pollute the hand with human blood, and to take away a life, which, once lost, is irrecoverable either with gold or prayers or an abundant price! Alas, he must carry a hard flint in his breast, who goes against his own entrails with the dread sword. Nor does the pious Church sell for a price its prebends, but gives them free to well-deserving persons, and she drives off evil spirits, nor may any of her affairs prosper by magic arts, arts summoned from the one³ dungeon of the abyss. In the last threshold of the book, too, Victoria, worthy of eternal life, teaches the conduct which befits those who come to the true use of reason.

Nor are slight thanks thine for so great a work, who art so ready to bring forth both from darkness and from rust the writings of so great a man, because, if God is propitious to the daring, thou shalt live eternally, and after paying the debt of death thou shalt live, and God will place thy soul, when freed from the body, in the ethereal heaven, and thou shalt appear among the gods. Only go on in thy well-deserving and spare not thy hard toil.

¹This is a literal prose translation of a laudatory poem, which Simon reproduces after the preface. It probably appeared in the Ingolstadt edition (1580), which Simon professes to reproduce. It also appears in the edition of Muñoz (1565) and it may be that Muñoz was its author.

²This is a literal prose translation of a laudatory poem, which Simon reproduces after the first laudatory poem. It probably appeared in the Ingolstadt edition (1580), which Simon professes to reproduce.

³Reading *uno* for *uni*; but the latter may be an extemporized genitive, "the dungeon of the one abyss."—TRANSL.

THE FIRST RELECTIO

OF THE REVEREND FATHER, BROTHER FRANCISCUS DE VICTORIA, ON THE INDIANS LATELY DISCOVERED.

The passage to be discussed is from St. Matthew's Gospel: "Teach all nations, baptizing them in the name of the Father and Son and Holy Spirit," last chapter.

SUMMARY OF THE FIRST SECTION.

1. How a person in doubt on any matter, to obtain safety of conscience, should consult those whose business it is to give instruction in such matters.
2. After one in doubt has taken such advice he ought to follow what the wise have laid down, else he will not be safe.
3. Whether one in doubt ought, consistently with safety of conscience, to follow the advice given by the wise in a doubtful matter when they lay down that to be now lawful which in other circumstances is unlawful.
- 303 4. Whether the Indian aborigines before the arrival of the Spaniards were true owners in public and in private law; and whether there were among them any true princes and overlords.
5. Examination of the error of those who assert that persons living in mortal sin can not have ownership of anything at all.
6. Mortal sin does not preclude civil ownership of the true kind.
7. Whether ownership is lost by reason of unbelief.
8. The divine law does not make heresy a cause of forfeiture of the heretic's property.
9. Whether heresy causes loss of ownership by human law.
10. A heretic incurs the penalty of confiscation of his property as from the date of the commission of his offense.
11. But although the heretic's offense is patent, the fisc may not seize his property before condemnation.
- 304 12. Even though condemnation issues after the heretic's death, confiscation of property dates back to the time of the commission of the offense, no matter who is vested with the property.
13. Sales, gifts, and all other modes of alienation by a heretic are void as from the date of the commission of the offense, etc.
14. Whether a heretic before condemnation is the owner of his property in the forum of conscience.
15. A heretic may lawfully live of his own property.
16. A heretic may make a gratuitous conveyance of his property, as by way of gift.
17. A heretic whose offense has rendered him liable to process may not convey his property for value, as by way of sale or dowry.
18. In what case a heretic may lawfully alienate his property for value.
19. Barbarians are not precluded by the sin of unbelief or by any other mortal sins from being true owners alike in public and in private law.
20. Whether the use of reason is a pre-requisite of capacity for ownership.
21. Whether a boy can be an owner before he has the use of reason.
- 305 22. Whether a person of unsound mind can be an owner.
23. Inasmuch as the Indian aborigines were not of unsound mind, they are not precluded from being true owners on the pretext of unsoundness of mind.
24. These aborigines were true owners alike in public and in private law before the advent of the Spaniards among them.

"Teach all nations, baptizing them in the name of the Father and Son and Holy Spirit" (*St. Matthew*, last chap.). This passage raises the question whether the children of unbelievers may be baptized against the wishes of their parents. This question is discussed by the doctors on the fourth book of the *Sententiae*, dist. 4, and by St. Thomas, *Secunda Secundae*, qu. 10, art. 12, and *Tertia Pars*, qu. 68, art. 10. The whole of this controversy and discussion was started on account of the aborigines of the New World, commonly called Indians, who came forty years ago into the power of the Spaniards, not having been previously known to our world. This present disputation about them will fall into three parts. In the first part we shall inquire by what right these Indian natives came under Spanish sway. In the second part, what rights the Spanish sovereigns obtained over them in temporal and civil matters. In the third part, what rights these sovereigns or the Church obtained over them in matters spiritual and touching religion, in the course of which an answer will be given to the question before us. 306

Threefold
nature of this
discussion.

Whether this
inquiry is en-
tirely useless.

As regards the first part, it might seem at the very outset that the whole of this discussion is useless and futile, not only for us who have no concern either to inquire whether the men in question have conducted their administration with propriety in every detail or to raise any doubts about that business or to correct any fault that may have been committed, but also for those whose concern it is to attend to and administer these matters. Firstly, this may so seem because neither the sovereigns of Spain nor those at the head of their councils are bound to make completely fresh and exhaustive examination of rights and titles which have already been elsewhere discussed and settled, especially as regards things of which the sovereigns are in *bona fide* occupation and peaceful possession; this is so because, as Aristotle says (*Ethics*, bk. 3), "if any one were to be continually inquiring, settlement would be indefinitely postponed"; and sovereigns and their advisers could not attain security and certitude of conscience, and, if they had to trace the title of their rule back to its origin, they could not keep anything they had discovered. Moreover, inasmuch as our sovereigns, namely Ferdinand and Isabella, who were the first to occupy those regions, were most Christian, and the Emperor Charles V was a most just and scrupulous sovereign, it is not to be believed that they did not make a thoroughly complete and exact investigation into everything that could affect the security of their estate and conscience, especially in such a great matter. On these accounts, then, it may seem not only useless but also presumptuous to raise any question about the matter; it is like looking for a knot in a bulrush and for wickedness in the abode of the righteous. 307

Lengthy reply
of the author.

In meeting this objection we must bear in mind what Aristotle says (*Ethics*, bk. 3), namely, that just as there can be no questioning or deliberation about matters either impossible or necessary, so also there can be no moral investigation about those which are certainly and notoriously lawful and seemly, or, on the other hand, about those which are certainly and notoriously unlawful and unseemly. For no one can prop-

erly raise a question whether we ought to live a temperate and brave and upright life or a wicked and base life, nor whether we ought to commit adultery or perjury, or cherish our parents, and other matters of this kind. Certainly such discussion would not be Christian. When, however, some project is on foot concerning which there is a genuine doubt whether it be
 308 good or bad, just or unjust, it is then advantageous to take advice and to deliberate and to abstain from premature action before finding out and determining how far it is or is not lawful. Such is the case with matters which, when viewed from different sides, look good or bad, as happens in many kinds of barter and contract and other businesses. And in all these cases the circumstances are such that, even if the thing in question were in itself lawful, it would be sinful for any one to do it before deliberating and assuring himself of its lawfulness; and he would not be excused on the ground of ignorance, for the ignorance would manifestly not be invincible, since he does not do what in him lies to inquire into the lawfulness or unlawfulness of the matter. For in order that an act, the goodness of which is otherwise uncertain, be good, it must be done in accordance with the investigation and determination of the wise, it being (*Ethics*, bk. 2) one of the conditions of a good act that it be done in accordance therewith. Accordingly, when, in a doubtful case, the doer omits to take the advice of the wise, he is without excuse. Nay, even if we grant that the act in question is lawful in itself, yet, if there be any doubt thereon, the doer is bound to take the advice, and to act in accordance with the award, of the wise, even though they be themselves in error.

What matters call for consultation.

In doubtful matters, abstain from action until its lawfulness is ascertained: to act otherwise is to sin.

309 Accordingly, if anyone, without consulting the doctors, were to make a contract, concerning the lawfulness or unlawfulness of which men were doubtful, he would undoubtedly sin, even though the contract were otherwise lawful and even if the doer thought so, not, however, on the authority of the wise, but of his own inclination and judgment. And on the same principle, were one in a doubtful matter to consult the wise and they were to rule against its lawfulness and yet he were to follow his own judgment and do the thing, he would sin even though the thing were otherwise lawful in itself. For example, suppose a man is in doubt whether so-and-so is his wife and he seeks advice whether he is bound to render the marital debt or whether it is right for him to do so, or whether he may exact it from her, and the doctors reply that it is not at all right, and yet he be led by his wife's affection and his own desire to refuse to accept that reply and thinks that his act is lawful, it is certainly sinful for him to approach his wife, although such approach be lawful in itself (as it really is), because he is acting contrary to the conscience which he ought to have. For in those matters which belong to his salvation a man is bound to yield credence to the teachers appointed by the Church, and in a doubtful matter their ruling is law. For just as in the contentious forum the judge is bound to judge in accordance with what is alleged and proved, so in the forum of conscience a man is bound to base his judgment, not on his own sentiments, but on demonstrable reason or on the authority of the wise;

Consult the wise that you may know what is lawful in such matters; act in accord with their judgment.

Sinful to do anything in such doubtful matters without consulting the wise, even though the act be otherwise lawful.

else his judgment is presumptuous and exposes him to the risk of going 310 wrong, and indeed he does err in the very fact. This accords with what was laid down in the Old Testament (*Deuteronomy*, ch. 17):

"If there arise a matter too hard for thee in judgment, between blood and blood, between plea and plea, between leprosy and not leprosy, being matters of controversy within thy gates (saith the Lord), thou shalt arise and get thee up to the place which the Lord thy God shall choose, and thou shalt come unto the priests the Levites and unto the judges that shall be in those days and enquire, and they shall show thee the sentence of judgment, and thou shalt do according to the sentence which they of authority in that place shall show thee, and according to the judgment which they shall tell thee thou shalt do, not declining to the right hand or to the left."

I accordingly assert that in doubtful matters a man is bound to seek the advice of those whom the Church has appointed for that purpose, such as prelates, preachers, and confessors, who are people skilled in divine and human law. For in the Church some are eyes, some feet, and so on (*I Corinthians*, ch. 12); and in *Ephesians*, ch. 4, "And he gave some, apostles; . . . some, evangelists; and some, pastors and teachers," and in *St. Matthew*, ch. 23, "The Scribes and the Pharisees sit in Moses' seat; all therefore whatsoever they bid you observe, that observe and do." And Aristotle (*Ethics*, bk. 1) lays this down as a precept, following Hesiod, "The man who is ignorant in himself, yet does not listen to another in order 311 to know what is good, is a foolish and empty person."

Let merchants take heed hereto.

Cajetan criticized.

Let women heed this.

He who follows the advice of the wise is safe in conscience so long as he has no reason for doubting or believing the contrary.

It is, therefore, not enough for security of life and conscience that a man should deem himself to be doing right, but in doubtful matters he must needs rely on the authority of others whose business is therewith. For it is not enough that merchants should abstain from doing what they themselves deem wrong, if they nevertheless enter into illegal contracts without the advice of the wise. And so I do not agree with Cardinal Cajetan when he says that if a doubt arises about something which really is lawful in itself and some preachers or confessors who otherwise have authority to pronounce thereon declare it unlawful or declare it mortal sin when it is venial, yet the man who, following his own inclination in the matter, disbelieves them and determines in his own conscience that it is not a mortal sin, does not sin. As an example, Cajetan takes the use by women of paint and other superfluous adornments, a thing really not a mortal sin, but which he assumes might be pronounced a mortal sin by preachers and confessors. If, says he, a woman is so given to such adornment that she does not yield assent to them, but thinks it lawful or not a mortal sin, she does not commit a mortal sin when she 312 resorts to such adornment. Now this I declare dangerous. For in those matters which are necessary to salvation a woman is bound to yield assent to the wise and she exposes herself to danger if contrariwise she does what the wise pronounce to be a mortal sin. And, on the other hand, if in a doubtful matter a man has taken counsel with the wise and has accepted their ruling that the thing is lawful, he is safe in conscience—at any rate until he receives a second opinion and is driven to doubt or to believe the contrary by a

person of such authority, or by reasons of such cogency, as ought to affect his judgment. This is notorious, for he does all that in him lies and so his ignorance is invincible.

The premises, then, establish the following propositions:

Three propositions deduced from the premises.
Proposition I.

FIRST. In doubtful matters a man is bound to seek the advice of those whose business it is to give it, otherwise he is not safe in conscience, whether the doubt be about a thing in itself lawful or unlawful.

Proposition II.

SECOND. If after a consultation in a doubtful matter it be settled by the wise that the thing is unlawful, a man is bound to follow their opinion, and if he act contrary thereto he is without excuse, even if the thing be otherwise lawful.

THIRD. On the other hand, if after such consultation it be settled by
313 the wise that the thing is lawful, he who follows their opinion is safe, even if it be otherwise unlawful.

Proposition III.

When, then, we return to the question before us, namely, the matter of the barbarians, we see that it is not in itself so evidently unjust that no question about its justice can arise, nor again so evidently just that no doubt is possible about its injustice, but that it has a look of both according to the standpoint. For, at first sight, when we see that the whole of the business has been carried on by men who are alike well-informed and upright, we may believe that everything has been done properly and justly. But then, when we hear of so many massacres, so many plunderings of otherwise innocent men, so many princes evicted from their possessions and stripped of their rule, there is certainly ground for doubting whether this is rightly or wrongly done. And in this way the discussion in question does not seem at all superfluous and so we get a clear answer to the objection. Moreover, even if it be granted that there is no doubt about the whole question, it is no novelty for theological discussions to be instituted on points of certainty. For we discuss about the Incarnation of our Lord and other articles of faith. For not always are theological discussions of the deliberative sort, but frequently they are of the demonstrative sort, that is, entered upon, not for purposes of deliberation, but of instruction.

The author adapts the foregoing to the doubt raised about the Indians, and answers it.

314 But some one may come forward and say: Although there were at one time some elements of doubt in this business, yet they have now been discussed and settled by the wise and so everything is now being administered in accordance with their advice and we have no need of a fresh enquiry. To such a person I answer first, God be blessed if it is so; our discussion raises no obstacle thereto; nor would I raise any new complaints. Secondly, I assert that it is not for jurists to settle this question or at any rate not for jurists only, for since the barbarians in question, as I shall forthwith show, were not in subjection by human law, it is not by human, but by divine law that questions concerning them are to be determined. Now, jurists are not skilled enough in the divine law to be able by themselves to settle questions of this sort. Nor am I sure that in the discussion and determination of this question theologians have ever been called competent to pronounce on so grave a matter. And as the issue concerns

He meets an objection.

Firstly.

Secondly.

The decision of this case is not for jurists, but for theologians.

And therefore
for priests,
that is, for the
Church.
Thirdly.

the forum of conscience, its settlement belongs to the priests, that is, to the Church. Accordingly in *Deuteronomy*, ch. 17, it is enjoined on the king that he take a copy of the law from the hand of the priest. Thirdly, in order that the whole of the matter be adequately examined and assured, is it not possible that so weighty a business may produce other special doubts deserving of discussion? Accordingly I think I shall be doing some- 315 thing which is not only not futile and useless, but well worth the trouble, if I am enabled to discuss this question in a manner befitting its importance.

The first
question
about the
Indians.

FOURTH. Returning now to our main topic, in order that we may proceed in order, I ask first whether the aborigines in question were true owners in both private and public law before the arrival of the Spaniards; that is, whether they were true owners of private property and possessions and also whether there were among them any who were the true princes and overlords of others. The answer might seem to be No, the reason being that slaves own no property, "for a slave can have nothing of his own" (*Inst.*, 2, 9, 3, and *Dig.*, 29, 2, 79), and so all his acquisitions belong to his master (*Inst.*, 1, 8, 1). But the aborigines in question are slaves. Therefore the matter is proved; for as Aristotle (*Politics*, bk. 1) neatly and correctly says, "Some are by nature slaves, those, to wit, who are better fitted to serve than to rule." Now these are they who have not sufficient reason to govern even themselves, but only to do what they are bidden, and whose strength lies in their body rather than in their mind. But, of a surety, if there be any such, the aborigines in question are preëminently such, for they really seem little different from brute animals and are utterly incapable 316 of governing, and it is unquestionably better for them to be ruled by others than to rule themselves. Aristotle says it is just and natural for such to be slaves. Therefore they and their like can not be owners. And it is immaterial that before the arrival of the Spaniards they had no other masters; for there is no inconsistency in a slave having no master, as the glossator on *Dig.*, 40, 12, 23, notes. Nay, the statement is expressly made in that passage of the *Digest* and it is the expressed case set out in *Dig.*, 45, 3, 36, pr., where it is said that a slave who has been abandoned by his master and not taken into possession by any one else can be taken into possession by any one. If, then, these were slaves they could be taken into possession by the Spaniards.

Case for an
affirmative
answer.

On the opposite side we have the fact that the people in question were in peaceable possession of their goods, both publicly and privately. Therefore, unless the contrary is shown, they must be treated as owners and not be disturbed in their possession unless cause be shown.

A distinction.

If the barbarians had not
dominion,
different
grounds that
can be as-
signed there-
for.

In aid of a solution I am loath to recall to notice the numerous utterances of the doctors on the nature of dominion. I have set them out at length when commenting on Restitution, 4, dist. 15, and on *Prima Secundae*, qu. 62, and I pass them by here for fear they should lead me to omit things of greater moment. 317 And so let me pass them over in order to observe that, if the aborigines had not dominion, it would seem that no other cause is assignable therefor except that they were sinners or were unbelievers or were witless or irrational.

FIFTH. Now, some have maintained that grace is the title to dominion and consequently that sinners, at any rate those in mortal sin, have no dominion over anything. That was the error of the poor folk of Lyons, or Waldenses, and afterwards of John Wycliffe. One error of his, namely, that "no one is a civil owner, while he is in mortal sin," was condemned by the Council of Constance. This opinion was also held by Armachanus (bk. 10, *Adversus errores Armenorum*, c. 4) and in the Dialogue, *Defensorium pacis*; and Waldensis wrote to controvert him in his *Doctrinale antiquitatum fidei*, vol. 1, bk. 2, ch. 81 and 82, and vol. 11, ch. 3. Armachanus relies on the fact that such dominion is reprobated by God: "They have set up Kings but not by me; they have made princes and I knew it not" (*Hosea*, ch. 8); and then is added the indictment, "Of their silver and their gold have they made them idols that they may be cut off." And so, says he, such persons have no lawful dominion in the eyes of God. It is certain, however, that all dominion is by divine authority, for God himself is the creator of every-
 318 thing, and none but they to whom He has given dominion can have it. Now it is not agreeable to reason that He should give it to the disobedient and transgressors of his commandments, just as human princes do not give their property, such as towns and strongholds, to rebels, and if they have given it to them, they confiscate it. But we ought to judge about divine things through the medium of human things (*Romans*, ch. 1). Therefore God does not give dominion to the disobedient. And in token hereof God at times removes such from their exalted position, as in the cases of Saul (*I Sam.*, ch. 15 and 16), and of Nebuchadnezzar and Balthazar (*Daniel*, ch. 4 and 5). Again (*Genesis*, ch. 1), "Let us make man in our own image and likeness that he may have dominion over the fish of the sea," etc. It appears therefore that dominion is founded on the image of God. But the sinner displays no such image. Therefore he has no dominion. Further, such a one commits the crime of treason. Therefore he deserves to lose his dominion. Likewise, St. Augustine says that the sinner is not worthy of the bread he eats. Also, the Lord had given our first parents dominion over paradise and then deprived them of it because of their sin (*Genesis*, ch. 1). Therefore, etc.

Error of the Waldenses, Wycliffe, and Armachanus about the first ground, i. e., sin.

In favor of the doctrine of Armachanus and the others named.

Argument 1.

Argument 2.

Argument 3.

Argument 4.

It is true that both Wycliffe and Armachanus speak without distinguishing and seem to be speaking rather of the dominion of sovereignty which belongs to princes. But because their reasoning applies equally to all dominion, they seem to have in view all kinds of dominion generally. And that is how Conrad (bk. 1, qu. 7) understands their teaching, and Armachanus is sufficiently clear in that sense. Those who would follow their teaching may, therefore, say that the barbarians had no dominion, because they were always in mortal sin.

SIXTH. But against this doctrine I advance the proposition that mortal sin does not hinder civil dominion and true dominion. Although this proposition was established in the Council of Constance, yet Almain (4, Dist. 15, qu. 2), following Ailly, bases an argument in favor of it, on the fact that a person already in mortal sin who finds himself in extreme need

The author replies by this proposition. Almain's reasoning set out and rejected.

would be in a dilemma, inasmuch as he must eat bread, and if he can not own any himself he takes another's. Therefore he can not escape mortal sin. This reasoning is, however, unsatisfactory, in the first place, because neither Armachanus nor Wycliffe seems to be speaking of natural dominion, but of civil; and, secondly, the consequence is denied, it being retorted that in case of necessity a man could take what is another's; and, thirdly, he is in no dilemma, because he can repent. The argument, therefore, must be differently framed.

The author's
reasoning or
proof 1.

First, if a sinner has not civil dominion (which is what they seem to 320 be speaking of), he, therefore, has not natural dominion; but the consequent is untrue; therefore, etc. I prove the consequence; for natural dominion is a gift of God, just as civil dominion is, nay, more so, for civil dominion seems an institute of human law. Therefore, if for an offense against God a man loses civil dominion, he would for the same reason lose his natural dominion also. But the falsity of the consequent is demonstrated by the fact that the man in question does not lose dominion over his own acts and over his own limbs, for a sinner has a right to defend his own life.

Proof 2.

Secondly, Holy Scripture often names as kings those who were wicked and sinners, as appears in the case of Solomon and Ahab and many others; but one can not be a king without having dominion; therefore, etc.

Proof 3.

Thirdly, I employ against the opposing party their own argument: Dominion is founded on the image of God; but man is God's image by nature, that is, by his reasoning powers; therefore, dominion is not lost by mortal sin. The minor is proved from St. Augustine (*De Trinitate*, bk. 9), and from the doctors.

Proof 4.

Fourthly, David called Saul his lord and king even when he was persecuting him (I *Sam.*, ch. 16, and elsewhere). Nay, David himself sinned at times, yet did not lose his kingdom on that account.

Proof 5.

Fifthly (*Genesis*, ch. 49), "The sceptre shall not depart from Judah, 321 nor a leader from between his feet, until he that is to be sent shall come," etc.; yet there were many bad kings; therefore, etc.

Proof 6.

Sixthly, spiritual power is not lost by mortal sin; therefore not civil, for it seems much less assuredly to be founded in grace than spiritual power is. Now, the antecedent is obvious, because a bad priest consecrates the Eucharist and a bad bishop consecrates a priest, beyond all doubt. Although Wycliffe denies this, Armachanus admits it.

Proof 7.

Seventhly, it is not at all likely, seeing that we are bidden to obey princes (*Romans*, ch. 13; and I *Peter*, ch. 2: "Be subject to your masters, not only to the good but also to the forward"), and not to take what belongs to another, that God meant that there should be any uncertainty as to who were true princes and owners.

Proof 8.

And, in sum, this is a manifest heresy. And in the same way that God makes His sun to rise on the good and on the bad and sends His rain on the just and on the unjust, so also He has given temporal goods alike to good and to bad. Nor is this subject discussed, because it is in doubt, but in order

that from one crime, to wit, from this insensate heresy, we may learn the character of all heretics.

SEVENTH. Now it remains to consider whether at any rate dominion
 322 may be lost by reason of unbelief. It might seem to be so, on the ground that heretics have no dominion, and therefore other unbelievers have not, inasmuch as their condition is not better than that of heretics. The antecedent is evident from the chapter *cum secundum leges* (5, 2, 19, in VI), where it is ruled that the goods of heretics are confiscated by the very fact. My answer is in the following propositions: The first proposition is that unbelief does not prevent anyone from being a true owner. This is the conclusion of St. Thomas Aquinas (*Secunda Secundae*, qu. 10, art. 12). It is proved also, firstly, by the fact that Scripture gives the name of king to many unbelievers, such as Sennacherib and Pharaoh and many other kings. Also by the fact that hatred of God is a graver sin than unbelief; but through hatred, etc. Also, St. Paul (*Romans*, ch. 13) and St. Peter (I *Peter*, ch. 2) enjoin obedience to princes, all of whom at that time were unbelievers, and slaves are there bidden to obey their masters. Also, Tobias ordered that a kid which had been taken from the Gentiles should be restored as having been stolen (*Tobias*, ch. 2); now, this would not be the case, if the Gentiles had no ownership. Also, Joseph made all the land of Egypt tributary to Pharaoh, who was an unbeliever (*Genesis*, ch. 47). The proposition is also supported by the reasoning of St. Thomas, namely: Unbelief
 323 does not destroy either natural law or human law; but ownership and dominion are based either on natural or on human law; therefore they are not destroyed by want of faith. In fine, this is as obvious an error as the foregoing. Hence it is manifest that it is not justifiable to take anything that they possess from either Saracens or Jews or other unbelievers as such, that is, because they are unbelievers; but the act would be theft or robbery no less than if it were done to Christians.

The second ground for loss of dominion is now considered; the question is whether it is lost by unbelief. The author gives some propositions in reply. Proposition I proved from Scripture.

And by reason.

Corollary.

EIGHTH. But because heresy presents peculiar difficulties, let a second proposition be: From the standpoint of the divine law a heretic does not lose the ownership of his property. This is generally accepted and is notorious. For since loss of property is a penalty and no penalty is ordained by the divine law for that condition, it is clear that from the standpoint of the divine law property is not forfeited on the ground of heresy. Further, this proposition is evident from the first proposition. For if ownership be not forfeited on the ground of any other unbelief, it follows that it is not forfeited on the ground of heresy, seeing that no special rules upon this point are enacted about heresy in the divine law.

Proposition II.

NINTH. But what about human law in this regard? Conrad, indeed
 324 (bk. I, qu. 7, con. 2 and 3), seems to hold that a heretic by the very fact loses the ownership of his property, and so in the forum of conscience he ceases to be capable of dominion. Hence he infers that a heretic can not alienate and that any alienation made by him is void. This is proved by the afore-mentioned chapter *cum secundum leges*, wherein the Pope premises that for certain crimes wrongdoers by the very fact lose the ownership of

their property by civil law, and the Pope rules that the same is to hold for the crime of heresy. And Joannes Andreae seems to hold the same opinion, in his comment on the afore-mentioned chapter *cum secundum leges*. And it seems to be had from the law *Manichaeos* (*Cod.*, I, 5, 4), whereby heretics are precluded from sale or gift or any dealing with their property. Also, civil laws bind in the forum of conscience, as St. Thomas teaches (*Prima Secundae*, qu. 96, art. 4).¹

Proposi-
tion III.

TENTH. Let the third proposition in the course of our exposition be: A heretic incurs confiscation of his property from the day of the commission of his offense. This is commonly held by the doctors and is the ruling in the *Directorium inquisitorum* (bk. 3, tit. 9), and also in the *Summa* of Baptista de Salis on the word *absolutio* (§ 17), and it seems settled in the afore-mentioned chapter *cum secundum leges* and in the afore-mentioned law *Manichaeos* (*Cod.*, I, 5, 4).

Proposi-
tion IV.

ELEVENTH. A fourth proposition: Nevertheless, although the offense 325 be manifest, the fisc can not seize the property of a heretic before condemnation. This is also generally received, and is the ruling of the afore-named chapter *cum secundum leges*. Nay, it would be contrary to the divine law and to natural law for a penalty to be enforced before condemnation has issued.

Corollary I.

TWELFTH. It follows from the third conclusion that, when condemnation has taken place, even though this be after death, the confiscation dates back to the time of the commission of the offense, no matter into whose control the property has come. This corollary is also generally admitted and especially by Panormitanus in his comment on 3, 5, 1 in VI.

Corollary II.

THIRTEENTH. And a second consequence is that every sale or gift of or other dealing with such property is void as from the day of the commission of the offense. And so, when condemnation has taken place, all such dealings are rescinded by the fisc and the property is taken by the same fisc, even without any repayment of the price to the purchasers. This, too, is generally admitted, and expressly so by Panormitanus in the passage just named, and is manifest from the afore-named law *Manichaeos* (*Cod.*, I, 5, 4).

Proposi-
tion V.

FOURTEENTH. A fifth proposition: Nevertheless a heretic continues to 326 be owner in the forum of conscience until he is condemned. This proposition seems to be at variance with Conrad and with the *Directorium inquisitorum* and Joannes Andreae; it is, however, the proposition of Sylvester, under the word *haeresis*, I, § 8. Adrian also maintains it, discussing the matter at some length (*Quotlibeta*, 6, qu. 2), and Cajetan seems to hold the same view in his *Summa*, under the word *poena*. The proposition is proved, first, by the fact that this deprivation in the forum of conscience is a penalty; therefore, it ought in no wise to be inflicted before condemnation. Nor am I sure whether human law could effect this at all. It is also proved by what is clear from the above-named chapter *cum secundum leges*, namely, that property is confiscated in the same way by the very

Proof 1.

Proof 2.

¹St. Thomas' Conclusio here is "Justae leges humanae obligant homines in foro conscientiae ratione leges aeternae a qua derivantur."—TRANSL.

fact of an incestuous marriage; as also when a free woman who has been ravished marries her ravisher. Nay, if any one fails to pay the accustomed dues on imported merchandise, the goods are forfeit by the very fact; as also in the case of an exporter of contraband merchandise, such as arms and iron, to the Saracens. All the details will be found in the above-named chapter *cum secundum leges* and in *Cod.*, 5, 5, 3, and *Cod.*, 9, 13, 1, and in 327 *X*, 5, 6, 6, and in *Dig.*, 39, 4, 16 (?). Aye, and the Pope expressly says in the afore-named chapter *cum secundum leges* that, just as confiscation takes place in the cases named, so he intends it to take place in a case of heresy. But no one denies that an incestuous person and a ravisher and one who supplies the Saracens with arms and one who does not pay customs remain true owners of their property in the forum of conscience. Why, then, does not a heretic also? Conrad himself treats as identical the cases named and the case of a heretic. It would, moreover, be over severe to require a man who has just been converted from heresy to give up his property to the fisc.

FIFTEENTH. It follows as a corollary that a heretic may lawfully live of his own property.

These four corollaries to be noted.

SIXTEENTH. Secondly, it follows also that he can make a gratuitous conveyance of his property, as by way of gift.

SEVENTEENTH. It follows, thirdly, that if his offense can be brought before the tribunals, he can not convey his property for value, as by way of sale or dowry. This is manifest, because he would defraud the buyer, making him incur the risk of loss of both the thing and the price, should he, the seller, be condemned.

EIGHTEENTH. Lastly, it follows that, if there were in fact no risk of confiscation, he might even make a conveyance for value. Thus, if some 328 heretic were in Germany, a Catholic could lawfully buy from him. For it would be oppressive if a Catholic could not buy land from a heretic or sell land to him in a Lutheran state; yet it would be necessary to say this, if a heretic were utterly disabled from ownership in the forum of conscience.

NINETEENTH. From all this the conclusion follows that the barbarians in question can not be barred from being true owners, alike in public and in private law, by reason of the sin of unbelief or any other mortal sin, nor does such sin entitle Christians to seize their goods and lands, as Cajetan proves at some length and neatly (*Secunda Secundae*, qu. 66, art. 8).

The principal conclusion is inferred.

Cajetan.

TWENTIETH. It remains to ask whether the Indians lacked ownership because of want of reason or unsoundness of mind. This raises the question whether the use of reason is a precondition of capacity for ownership in general. Conrad, indeed (bk. 1, qu. 6), propounds the conclusion that ownership is competent to irrational creatures, alike sensible and insensible. 329 The proof consists in the fact that ownership is nothing more than the right to put a thing to one's own use. But brutes have this right over the herbs and plants (*Genesis*, ch. 1): "Behold I have given you every herb bearing seed which is upon the face of all the earth and every tree in the which is the fruit of a tree yielding seed; to you it shall be for meat

Question about the third ground: i. e., whether the Indians lack ownership because of want of reason. Opinion of Conrad.

and to every beast of the earth." The stars, too, have the right to shine for light (*Genesis*, ch. 1), "And God set them in the firmament of the heaven to give light upon the earth and to rule over the day and over the night." And the lion has dominion over all animals that walk, whence he is called the king of beasts. And the eagle is lord among the birds whence in Psalm 103 the verse about his house being their leader.¹ Sylvester (under the word *dominium*, at the beginning) is of the same opinion as Conrad, saying that the "elements exercise dominion one over the other."

And of Sylvester.

The author answers by certain propositions.

Proposition I.

Proof 1.

The opinion of Conrad and Sylvester rejected.

I answer by the following propositions:

First: Irrational creatures can not have dominion. This is clear, because dominion is a right, as even Conrad admits. But irrational creatures can not have a right. Therefore they can not have dominion. The proof of the minor is that they can not suffer a wrong and therefore can have no right. The proof of this assumption is that he who kept off a wolf or a lion from its prey or an ox from its pasture would not do it a wrong, nor would he who shut a window to prevent the sun from shining in do the sun a wrong. And this is confirmed by the fact that, if the brutes have dominion, he who took away the grass from a stag would commit theft, for he would be taking what belongs to another against the owner's will.

Proof 2.

Also, wild beasts have not dominion over themselves. Therefore much less over other things. The proof of the assumption is that they may be killed with impunity, even for pleasure; and so Aristotle (*Politics*, 1) says that the chase of wild beasts is just and natural.

Proof 3.

Also, wild beasts themselves and all irrational animals are more fully within the ownership of man than slaves are. Therefore, if slaves can not have anything of their own, much less can irrational animals.

Our proposition is also confirmed by the authority of St. Thomas Aquinas (*Prima Secundae*, qu. 1, art. 1 and 2, and qu. 6, art. 2, and *Contra Gentiles*, bk. 3, c. 110), to the effect that only rational creatures have dominion over their acts, the test of a man's being master of his acts being (as St. Thomas says, *Prima Pars*, qu. 82, art. 1, on obj. 3) that he has the power of choice. Hence (as he says in the same place) we are not masters of our appetite as regards its final end. If, then, the brutes have not dominion over their acts, they have it not over other things. And although this seems to be a dispute about a name, it is assuredly a highly improper and unusual mode of speech to attribute dominion to things irrational. For we do not ordinarily say that a man has dominion save over that which is placed within his control. For when we have not dominion, we speak thus: "It is not within my control," "It is not in my power." Now, as the brutes are rather moved than move themselves, as St. Thomas says (*Prima Secundae*, as above), they for that reason have no dominion.

Sylvester's reasoning rejected.

Nor is there any force in Sylvester's remark that dominion sometimes does not signify right, but only power, in which sense we say that fire has dominion over water. For, if this is enough to confer dominion, a robber

¹This is founded on a mistranslation of the Hebrew; see A. V., Ps. 104, v. 17.—TRANSL.

has dominion over his victim even up to death, because he has power to kill him, and a thief has power to seize his victim's money. Further, as regards the statement that the stars exercise dominion and that the lion is king of beasts, obviously this is said metaphorically and by way of figure.

332 TWENTY-FIRST. There might seem some doubt whether a boy, who has not yet the use of reason, can have dominion, inasmuch as he seems to differ little from irrational animals. And the Apostle says (*Galatians*, ch. 4): "The heir, as long as he is a child, differeth nothing from a slave"; but a slave has not dominion; therefore, etc. But let our second proposition be: Boys, even before they have the use of reason, can have dominion. This is manifest, because they can suffer wrong; therefore they have rights over things; therefore also they have dominion, which is naught else than a right. Also, the property of wards is not part of the guardian's property; but it has owners and no others are its owners; therefore the wards are the owners. Also, boys can be heirs; but an heir is one who succeeds to the rights of the deceased and who has dominion over the inheritance (*Dig.*, 44, 3, 11, and *Inst.*, 2, 19, 7). Also, as already said, the basis of dominion is in the possession of the image of God, and children already possess that image. The Apostle, moreover, says in the passage of *Galatians* just cited, "The heir, as long as he is a child, differeth nothing from a slave, though he be lord of all." The same does not hold good of an irrational creature, for a boy does not exist for the sake of another, as does a brute, but for his own sake.

Doubt concerning a boy, to whom dominion does not seem to belong before the use of reason is attained.
Proposition II.
Proof 1.

Proof 2.

Proof 3.

Proof 4.

333 TWENTY-SECOND. But what about those suffering from unsoundness of mind? I mean a perpetual unsoundness whereby they neither have nor is there any hope that they will have the use of reason. Let our third proposition be: It seems that they can still have dominion, because they can suffer wrong; therefore they have a right, but whether they can have civil dominion is a question which I leave to the jurists.

Proposition III.

TWENTY-THIRD. However this may be, let our fourth proposition be: The Indian aborigines are not barred on this ground from the exercise of true dominion. This is proved from the fact that the true state of the case is that they are not of unsound mind, but have, according to their kind, the use of reason. This is clear, because there is a certain method in their affairs, for they have polities which are orderly arranged and they have definite marriage and magistrates, overlords, laws, and workshops, and a system of exchange, all of which call for the use of reason; they also have a kind of religion. Further, they make no error in matters which are self-evident to others; this is witness to their use of reason. Also, God and nature are not wanting in the supply of what is necessary in great measure for the race. Now, the most conspicuous feature of man is reason, and

334 power is useless which is not reducible to action. Also, it is through no fault of theirs that these aborigines have for many centuries been outside the pale of salvation, in that they have been born in sin and void of baptism and the use of reason whereby to seek out the things needful for salvation. Accordingly I for the most part attribute their seeming so unintelligent and

Proposition IV.
The aborigines of the New World not wholly without reason.

stupid to a bad and barbarous upbringing, for even among ourselves we find many peasants who differ little from brutes.

Principal conclusion deduced from the foregoing.

TWENTY-FOURTH. The upshot of all the preceding is, then, that the aborigines undoubtedly had true dominion in both public and private matters, just like Christians, and that neither their princes nor private persons could be despoiled of their property on the ground of their not being true owners. It would be harsh to deny to those, who have never done any wrong, what we grant to Saracens and Jews, who are the persistent enemies of Christianity. We do not deny that these latter peoples are true owners of their property, if they have not seized lands elsewhere belonging to Christians.

Answer to the argument on the negative side adduced in No. 4, above, wherein a passage of Aristotle's *Politics*, bk. 1, is expounded.

It remains to reply to the argument of the opposite side to the effect 335 that the aborigines in question seem to be slaves by nature because of their incapability of self-government. My answer to this is that Aristotle certainly did not mean to say that such as are not over-strong mentally are by nature subject to another's power and incapable of dominion alike over themselves and other things; for this is civil and legal slavery, wherein none are slaves by nature. Nor does the Philosopher mean that, if any by nature are of weak mind, it is permissible to seize their patrimony and enslave them and put them up for sale; but what he means is that by defect of their nature they need to be ruled and governed by others and that it is good for them to be subject to others, just as sons need to be subject to their parents until of full age, and a wife to her husband. And that this is the Philosopher's intent is clear from his corresponding remark that some are by nature masters, those, namely, who are of strong intelligence. Now, it is clear that he does not mean hereby that such persons can arrogate to themselves a sway over others in virtue of their superior wisdom, but that nature has given them capacity for rule and government. 336 Accordingly, even if we admit that the aborigines in question are as inept and stupid as is alleged, still dominion can not be denied to them, nor are they to be classed with the slaves of civil law. True, some right to reduce them to subjection can be based on this reason and title, as we shall show below. Meanwhile the conclusion stands sure, that the aborigines in question were true owners, before the Spaniards came among them, both from the public and the private point of view.

SUMMARY OF THE SECOND SECTION.

On the illegitimate titles for the reduction of the aborigines of the New World into the power of the Spaniards.

1. The Emperor is not the lord of the whole world.
2. Even if the Emperor were the lord of the world, that would not entitle him to seize the provinces of the Indian aborigines and to erect new lords and put down the former lords or to levy taxes.
3. The Pope is not civil or temporal lord of the whole world, in the proper sense of civil lordship and power.
4. Even if the Supreme Pontiff had secular power over the world, he could not give that power to secular princes.
5. The Pope has temporal power, but only so far as it subserves things spiritual.
6. The Pope has no temporal power over the Indian aborigines or over other unbelievers.
- 338 7. A refusal by these aborigines to recognize any dominion of the Pope is no reason for making war on them and for seizing their goods.
8. Whether these aborigines were guilty of the sin of unbelief, in that they did not believe in Christ, before they heard anything of Christianity.
9. What is required in order that ignorance may be imputed to a person as, and be, sin, that is, vincible ignorance. And what about invincible ignorance?
10. Whether the aborigines are bound to hearken to the first messengers of Christianity so as to commit mortal sin in not believing Christ's Gospel merely on its simple announcement to them.
11. If the faith were simply announced and proposed to them and they will not straightway receive it, this is no ground for the Spaniards to make war on them or to proceed against them under the law of war.
12. How the aborigines, if they refuse when asked and counselled to hear peaceably preachers of religion, can not be excused from mortal sin.
13. When the aborigines would be bound to receive Christianity under penalty of mortal sin.
14. In the author's view it is not sufficiently clear whether Christianity has been so proposed and announced to these aborigines that they are bound to believe it under the penalty of fresh sin.
- 339 15. Even when Christianity has been proposed to them with never so much sufficiency of proof and they will not accept it, this does not render it lawful to make war on them and despoil them of their possessions.
16. Christian princes can not, even on the authority of the Pope, restrain these aborigines from sins against the law of nature or punish them therefor.

It being premised, then, that the Indian aborigines are or were true owners, it remains to inquire by what title the Spaniards could have come into possession of them and their country.

And first, I shall advert to the titles which might be alleged, but which are not adequate or legitimate.

Secondly, I shall set out the legitimate titles under which the aborigines could have come under the sway of the Spaniards.

Now, there are seven titles, which might be alleged, but which are not adequate, and seven or eight others, which are just and legitimate.

The first title that might be alleged, then, is that the Emperor is the lord of the world, and in such a way that, even if it be granted that in time past there was a defect in his claim, it would by now be purged as regards

The author proposes to set out the titles, both legitimate and non-legitimate, by which the Spaniards might have seized the territory of the aborigines. The first non-legitimate title.

our present, most Christian Emperor. For, even if we assume that the Indian aborigines may be true owners, yet they might have superior lords, just as inferior princes have a king and as some kings have the Emperor 340 over them. There can in this way be many persons having dominion over the same thing; and this accounts for the well-worn distinction drawn by the jurists between dominion high and low, dominion direct and available, dominion pure and mixed. The question, therefore, is whether the aborigines had any superior lord. And, as this question can only arise with regard to either the Emperor or the Pope, let us speak of these.

Is the Emperor lord of the whole earth. For the affirmative.

Argument 1.
Argument 2.

Argument 3.

Opinion of Bartolus and the glossators, for affirmative.

Proof 1.

The first allegation to consider is that the Emperor is lord of the whole world and therefore of these barbarians also. This is supported, firstly, by the appellation, "Lord of the world," commonly given to the late Emperor Maximilian or to the present Emperor Charles, ever August. Also (*Luke*, ch. 2), "There went out a decree from Caesar Augustus that a census should be taken of all the world"; but Christian Emperors ought not to be in any worse condition than he; therefore, etc. Also, our Lord seems to have pronounced Caesar to be the true lord of the Jews. "Render unto Caesar," said he, "the things that are Caesar's," etc. (*St. Luke*, ch. 20). But it does not seem that Caesar could have this right, save as Emperor. Therefore Bartolus, commenting on the Extravagans of Henry VII, *Ad reprimendum*, expressly holds that "the Emperor is the rightful lord of the whole world." And this is also the opinion of the glossator on *X*, 4, 17, 13. So, too, the glossator on *X*, 1, 6, 34.

And they prove the allegation first from can. 41, C. 7, qu. 1, where Gregory¹ says that there is one king among bees, and in the world one 341 Emperor, and also from *Dig.*, 14, 2, 9, where the Emperor Antoninus says: "I indeed am lord of the earth," and *Cod.*, 7, 37, 3, § 1, "everything is understood to belong to the Emperor."

Proof 2.

The allegation might also be supported by the fact that Adam first and then Noah seem to have been lords of the world: "Let us make man in our image, after our likeness, and let them have dominion over the fish of the sea and over the fowl of the air and over all the earth," etc. (*Genesis*, ch. 1), and a little later on, "Be fruitful and multiply and replenish the earth and subdue it," etc.; and there is a similar pronouncement made to Noah (*Genesis*, ch. 8). But these two had successors. Therefore.

Proof 3.

Also, there is a proof in the incredibility of God's having instituted in the world anything but the best system of government: "In wisdom hast thou made them all" (*Psalms* 104). But monarchy is the best system, as St. Thomas admirably shows (*De regimine principum*, bk. 1, ch. 2), and as Aristotle seems to hold (*Politics*, bk. 3). Therefore, it seems to be in accordance with divine institution that there should be one Emperor in the world.

Proof 4.

Also, the things which are outside nature ought to imitate things natural. But in things natural there is always one governor; as in the

¹Victoria has *Hieronymus* here following the *editio Romana* of the *Corpus Juris Canonici*, which attributes this to St. Jerome.

body, it is the heart; in the soul, it is reason. Therefore in the world there ought to be one governor, just as there is one God.

1. Now, this contention is baseless. Let our first conclusion, then, be:
- 342 The Emperor is not the lord of the whole earth. This is proved from the fact that dominion must be founded either on natural or divine or human law; but there is no lord of the earth in any of these; therefore, etc. The minor is proved, first as regards natural law, by what St. Thomas well says (*Prima Pars*, qu. 92, art. 1, on obj. 2, and qu. 96, art. 4), namely, that by natural law mankind is free save from paternal and marital dominion—for the father has dominion over his children and the husband over the wife by natural law; therefore no one by natural law has dominion over the world. And, as St. Thomas also says (*Secunda Secundae*, qu. 10, art. 10), dominion and preëminence were introduced by human law; they, therefore, were not by natural law. Nor would there be any greater reason why this dominion should be more proper for Germans than for Gauls. And Aristotle (*Politics*, bk. 1) says, Power is of two kinds, the one originates in the family, like that of the father over his sons and that of the husband over the wife, and this is a natural power; the other is civil, for, although it may take its rise in nature and so may be said to be of natural law, as St. Thomas says (*De regimine principum*, bk. 1, ch. 2), yet, man being a political animal, it is founded not on nature, but on law.

Bartolus' opinion rejected. Proposition 1 laid down.

Proof that dominion over the whole world is not in the Emperor by natural law.

- Now, as regards divine law, we do not read that before the coming of our Saviour Christ the Emperors were lords of the whole world, although in the gloss mentioned on the Extravagans, *Ad reprimendum*, Bartolus
- 343 adduces the passage in *Daniel*, ch. 2, about Nebuchadnezzar, of whom it is said: "Thou, O King, art a King of Kings; for the God of Heaven hath given thee a Kingdom and power and strength and glory. And wheresoever the children of men dwell, He hath given thee all." It is, however, certain that Nebuchadnezzar received his sovereignty from God by no special grant, but in the same way as other princes (*Romans*, ch. 13): "There is no power but of God"; and (*Proverbs*, ch. 8): "By me kings reign and princes decree justice." Further, Nebuchadnezzar had not a legal rule over the whole earth, as Bartolus thinks, for the Jews were not legal subjects of his.

Proof that the Emperor is not lord of the whole world by divine law. Proof 1.

How the passage in *Daniel* is to be taken.

- Another proof that there was by divine law no ruler over the whole world lies in the fact that the Jewish nation was free from the foreigner; nay, the Jews were forbidden by their law to have any foreigner as their lord (*Deuteronomy*, ch. 17): "Thou mayest not set a stranger to be king over thee." And, although St. Thomas (*De regimine principum*, bk. 3, ch. 4 and 5) says that the Romans were entrusted with empire by God because of their justice and their patriotism and the excellence of their laws, yet this is not to be taken to mean that they had their empire by divine grant or institution, as St. Augustine also says (*De civitate Dei*, ch. 18), but that in the divine providence it befell that they should obtain the sovereignty
- 344 of the world. This, however, was not in the way in which Saul or David had his kingdom from God, but in some other way, such as by just war or other title.

Proof 2.

How God is said to have given empire to the Romans.

Proof 3.

This will be plain to any one who considers the titles and modes of succession whereby sovereignty and lordship in the world have come down to our own day. For, to omit everything that happened before the flood, the world was certainly divided after Noah into different provinces and kingdoms, whether this were by ordinance of Noah himself—for he survived the flood three hundred and fifty years (*Genesis*, ch. 9), and sent colonies into different regions, as appears in Berosus of Babylon—or whether, as is more likely, different family-groups by the common agreement of mankind occupied different provinces, as (*Genesis*, ch. 13) “Abram said unto Lot: ‘ . . . Is not the whole land before thee? . . . If thou wilt take the left hand, then I will go to the right, or if thou depart to the right hand, then I will go to the left.’” We are, accordingly, told (*Genesis*, ch. 10) that through the descendants of Noah came diversities of peoples and countries, whether in some regions they first assumed lordship by usurpation, as Nimrod seems to have done, of whom *Genesis*, ch. 10, v. 8, says that he was the first to be a mighty one in the earth, or whether by accord of several to unite in one State they appointed a prince over themselves by common agreement. For it is sure that either in these or in other like modes sovereignty and lordship began in the world and that afterwards, either by right of inheritance or of war or by some other such title, they 345 were continued unto our own day, or at any rate up to the time of the Saviour’s coming. Herein it is manifest that before the coming of Christ no one was vested with world-wide sway by divine law and that the Emperor can not at the present day derive therefrom a title to arrogate to himself lordship over the whole earth, and consequently not over the barbarians.

Reason for saying that after Christ’s coming, the Emperor is lord of the whole earth.

It might, however, be alleged that after our Lord’s coming there was one Emperor over the world by express grant of Christ, in that He, as regards His manhood, was Lord of the world, according to *St. Matthew*, ch. 28: “All power is given unto me,” etc., which, according to *St. Augustine* and *St. Jerome*, is to be understood as regards His manhood. Also, as the Apostle declares (*I Corinthians*, ch. 15), “He hath put all things under his feet.” Therefore, just as He left on earth one vicar in matters spiritual, so also in matters temporal, and in the latter case it is the Emperor. *St. Thomas*, too, says (*De regimine principum*, bk. 3, ch. 13) that Christ was from His nativity the true Lord and monarch of the world and that Augustus though unwitting thereof, was acting as His deputy. Now, it is clear that this deputyship was not in matters spiritual, but in matters temporal. Seeing, then, that Christ’s Kingdom, if it were temporal, was over the whole world, Augustus was, on that showing, lord of the world and so on the same principle his successors were.

The author demolishes this reasoning.

This reasoning is, however, quite inadmissible: In the first place, 346 because of the doubt attaching to the statement that Christ as regards His manhood was temporal Lord of the world. The probability indeed is that He was not, and our Lord seems to have asserted as much in the passage: “My Kingdom is not of this world.”¹ Accordingly, *St. Thomas* remarks in this

¹*St. John*, ch. 18, v. 36.

connection that Christ's dominion is directly appointed for the soul's salvation and for spiritual profit, although it is not excluded in matters temporal in the same fashion as it is appointed in matters spiritual. This shows that in St. Thomas's view His Kingdom was not of the same sort as a civil and temporal kingdom, but that, while He had all kinds of power, even in matters temporal, which would subserve the aim of redemption, yet apart from that aim He had none. Further, even if we grant that He was temporal Lord, it is guess-work to say that He bequeathed that power to the Emperor, there being no mention of any such thing in the whole Bible. And as regards St. Thomas's statement that the Emperor Augustus was Christ's vicegerent, firstly, he does indeed make it in the passage referred to, but in his *Tertia Pars*, where he is professedly discussing the power of Christ, he makes no mention of this temporal power.

Secondly, St. Thomas's meaning is that the Emperor was Christ's vicegerent to the extent that temporal power is subordinate and subservient 347 to spiritual power. In this sense, of a truth, kings are the servants of bishops, just as the smith's art is subject to the knight's and the soldier's, while all the time neither the soldier nor his superior officer is a smith, but is only concerned to give the smith orders about the making of armor. Again, St. Thomas, writing on that passage in *St. John*, ch. 18, expressly says that Christ's Kingdom is not temporal or such a kingdom as Pilate conceived, but a spiritual kingdom, inasmuch as our Lord declares in that passage: "Thou sayest that I am a King. To this end was I born and for this cause came I into the world, that I should bear witness unto the truth." This shows it to be a mere fiction to say that by express grant of Christ there is one Emperor and lord of the world.

A consideration which palpably confirms this is the following: If there had been any such institution by divine law, how comes it that the Empire was divided into Eastern and Western, first among the sons of Constantine the Great and then, later, by Pope Stephen, who conferred the Empire of the West on the Germans, as is held in *X*, 1, 6, 34? For the assertion that the Greeks thereafter were not Emperors is inept and ignorant, as the glossator hereon points out, seeing that the German Emperors never claimed in virtue of this grant to be Lords of Greece, and John Palaeologus, Emperor of Constantinople, was held to be lawful Emperor at the Council of Florence. 348 Moreover, the patrimony of the Church (as the jurists themselves, and even Bartolus, confess) is not subject to the Emperor. Now, if all things were subject to the Emperor by divine law, no imperial gift or any other title could divest the Emperors of them, any more than the Pope can release any one from the power of the Popes. Also, the Kingdom of Spain is not subject to the Emperor, nor is France, as is also held in *X*, 1, 6, 34 above-mentioned, although the glossator adds out of his own head that this is not so much a matter of law as of fact. Also, the doctors agree that States, which have in times past been subject to the Empire, might be freed from that subjection by prescription; which would not be the case, if this subjection were in virtue of a divine law.

The author returns to the confirmation of his proposition. The Pope, who granted the Empire, is said to have been Leo III.

The author proves that the Emperor is not lord of the world by human law either.

Second proposition. As the gloss on the preface to the Digest.

Discussion of the second title whereby the Spaniards could obtain possession of the barbarians.

The opinion of some jurists-consults.

Now, in point of human law, it is manifest that the Emperor is not lord of the world, because either this would be by the sole authority of some law, and there is none such; or, if there were, it would be void of effect, inasmuch as law presupposes jurisdiction. If, then, the Emperor had no jurisdiction over the world before the law, the law could not bind one who was not previously subject to it. Nor, on the other hand, had the Emperor this position by lawful succession or by gift or by exchange or by purchase or by just war or by election or by any other legal title, as is admitted. Therefore the Emperor never was the lord of the whole world.

2. Second conclusion: Granted that the Emperor were the lord of the world, still that would not entitle him to seize the provinces of the Indian aborigines and erect new lords there and put down the former ones or take taxes. The proof is herein, namely, that even those who attribute lordship over the world to the Emperor do not claim that he is lord in ownership, but only in jurisdiction, and this latter right does not go so far as to warrant him in converting provinces to his own use or in giving towns or even estates away at his pleasure. This, then, shows that the Spaniards can not justify on this ground their seizure of the provinces in question.

A second alleged title to the lawful possession of these lands, and one which is vehemently asserted, is traced through the Supreme Pontiff. For it is claimed that the Pope is temporal monarch, too, over all the world and that he could consequently make the Kings of Spain sovereign over the aborigines in question, and that so it has been done.

In this matter there are some jurists, who hold that the Pope has full jurisdiction in temporal matters over the whole earth, and they even add that the power of all secular princes comes to them from the Pope. This is the tenet of Hostiensis on X, 3, 34, 8; also of the Archbishop (pt. 3, tit. 22, ch. 5, § 8); and also of Augustinus Anconitanus. Sylvester holds the same doctrine, making a much more ample and liberal concession of this power to the Pope, under the word *infidelitas* (§ 7) and under the word *Papa* (§§ 7, 10, 11 and 14), and under the word *legitimus* (§ 4). He has some singular remarks on this topic in the passages mentioned, as, for example, that "the power of the Emperor and all other princes is sub-delegated as regards the Pope, being derived from God through the medium of the Pope," and that "all their power is dependent on the Pope," and that "Constantine gave lands to the Pope in recognition of his temporal power," and on the other hand that "the Pope gave the Empire to Constantine to his use and profit," nay, that "Constantine's act was really not a gift, but merely the return of what had previously been taken away," and that, "if the Pope does not exercise jurisdiction in temporal matters outside the patrimony of the Church, this is not for want of authority, but in order to avoid the scandal of the Jews and in order to promote peace"; and many other things even more empty and absurd than these. The sole proof that he gives herefor is in the passages "The earth is the Lord's and the fulness thereof,"¹ and "All power is given unto me, both in heaven and in earth,"² and the Pope

¹Psalm 24, v. 1.

²St. Matthew, ch. 28, v. 18.

is the vicar of God and of Christ, and (*Philippians*, ch. 2) Christ "for our sake became obedient even unto death," etc. Bartolus, too, seems to be of this opinion in his comment on the Extravagans, *Ad reprimendum*, and
 351 St. Thomas seems to favor it at the end of the second book of the *Sententiae*, the closing words of which are by way of solution of the fourth argument, which is the last of the whole book, namely, that the Pope holds the summit of both kinds of power, both secular and spiritual, and Herveus is of the same opinion in his *De potestate Ecclesiae*.

This, then, being laid as a basis, the authors of this opinion say as follows: In the first place, that the Pope has free power, on the footing of supreme temporal lord, to make the Kings of Spain rulers over the Indian aborigines. Secondly, they say that, even if it be assumed that he could not do this, at any rate if these aborigines refused to recognize the temporal power of the Pope over them, this would warrant him in making war on them and in putting rulers over them. Now, each of these things has been done. For, first, the Supreme Pontiff granted the provinces in question to the Kings of Spain. Secondly, the aborigines were notified that the Pope is the vicar of God and His vicegerent on earth and it was claimed that they should, therefore, recognize him as their superior, and their refusal furnishes a good ground for making war on them and seizing their lands, etc. Hostiensis, *place cited*, expressly makes this point, so does Angelus in his *Summa*.

Summary of the opinion of the afore-mentioned.

Now, inasmuch as I have fully discussed the temporal power of the Pope in my *Relectio de Potestate Ecclesiastica*, I will put my answer to the
 352 above into a few brief propositions:

The author replies in a few propositions.

3. First: The Pope is not civil or temporal lord of the whole world in the proper sense of the words "lordship" and "civil power." This is the conclusion arrived at by Torquemada (bk. 2, ch. 113), and by Joannes Andreae and by Hugo, on can. 6, Dist. 96. And the most learned Innocent admits, in the above cited *X*, I, 6, 34, that he has not temporal power over the Kingdom of France. And it seems the definite opinion of St. Bernard in the second book of his *De consideratione*, addressed to Pope Eugenius III. The opposite opinion seems contrary to the precept of our Lord who, (*St. Matthew*, ch. 20, and *St. Luke*, ch. 22), says, "Ye know that the princes of the Gentiles exercise lordship over them," etc. "But it shall not be so among you." And contrary also to the precept of the Apostle Peter, "neither as being lords over [God's] heritage but being ensamples to the flock."¹ And if Christ the Lord had not temporal power, as has been shown in the foregoing discussion to be more probable and as is also the opinion of St. Thomas, much less has the Pope it, he being Christ's vicar. The above-mentioned thinkers attribute to the Pope that which he has never claimed for himself; nay, he admits the contrary in many passages, as I have shown in the *Relectio* referred to. And the proof is sufficient, like that given above concerning the Emperor, for no lordship can come to him save either by natural law or by divine law or by human law. Now, it is certain that none comes to him by natural or by human law, and none is

Proposition I.

¹I *Pet.*, ch. 5.

shown to come to him by divine law. Therefore the assertion is ungrounded and arbitrary.

The author
refutes the
arguments of
the opposite
side.

Further, our Lord's injunction to Peter, "Feed my sheep,"¹ clearly 353 shows that power in spiritual and not in temporal matters is meant. It is, moreover, demonstrable that the Pope has not the whole world for his sphere. For our Lord said (*St. John*, ch. 10) that there should be "one flock and one shepherd" at the end of the age. This is sufficient proof that at the present day all are not sheep of this flock. Again, assuming that Christ had this power, it is manifest that it has not been entrusted to the Pope. This appears from the fact that the Pope is no less vicar of Christ in spiritual than in temporal matters. But the Pope has no spiritual jurisdiction over unbelievers, as even our opponents admit, and, as seems (*I Corinthians*, ch. 5) to have been the express teaching of the Apostle: "For what have I to do to judge them also that are without?" Therefore he has it not also in temporal matters. And of a truth there is nothing in the argument that, as Christ had temporal power over the world, therefore the Pope also has it. For Christ undoubtedly had spiritual power over the whole world, not less over believers than over unbelievers and could make laws which bound the whole world, as he did with regard to baptism and the articles of faith. And yet the Pope has not that power over unbelievers and may not excommunicate them or forbid their marriage within the degrees permitted by the divine law. Therefore. Also, the fact that, according to the doctors, Christ did not entrust supremacy in power even to the Apostles 354 shows that there is no force in the consequence: Christ had temporal power over the world; therefore the Pope has it too.

Proposi-
tion II.

4. Second proposition: Even assuming that the Supreme Pontiff had this secular power over the whole world, he could not give it to secular princes. This is obvious, because it would be annexed to the Papacy. Nor can any Pope sever it from the office of Supreme Pontiff or deprive his successor of that power, for the succeeding Supreme Pontiff can not be less than his predecessor; and, if some one Pontiff had made a gift of this power, either the grant would be null or the succeeding Pontiff could cancel it.

Proposi-
tion III.

5. Third proposition: The Pope has temporal power only so far as it is in subservience to matters spiritual, that is, as far as is necessary for the administration of spiritual affairs. This is also the view of Torquemada (*as above*, ch. 114), and of all the doctors. And the proof of it lies in the fact that an art to which a higher end pertains is imperative and preceptive as regards the arts to which lower ends pertain (*Ethics*, bk. 1). But the end of spiritual power is ultimate felicity, while the end of civil power is political felicity. Therefore, temporal power is subject to spiritual power. This is the reasoning adopted by Innocent in *X*, 1, 33, 6; and it receives 355 confirmation from the consideration that, whenever anybody is entrusted with the charge of any office, he is impliedly granted everything without which the duties of the office can not rightly be discharged (*X*, 1, 29, 1). Inasmuch, then, as the Pope is a spiritual pastor by Christ's commission

¹*St. John*, ch. 21, v. 17.

and the discharge of the duties of this office can not be hindered by the civil power (there being no lack in the provision of things necessary either by God or by Nature), it is beyond doubt that power over things temporal has also been left to him so far as is necessary for the government of things spiritual. And on this principle the Pope can infringe civil laws which tend to breed sinners, just as he has infringed the laws with regard to prescription by a party acting in bad faith, as is clear from *X*, 2, 26, 20. And on this principle also, when princes are at variance with one another about some right of sovereignty and are rushing into war, he can act as judge and inquire into the claims of the parties and deliver judgment, a judgment which the princes are bound to respect, lest those numerous spiritual evils should befall which are the inevitable results of a war between Christian princes. And although the Pope does not do this or does not do it often, it is not because he can not, as Master Durandus says, but because, for fear of scandal, he wishes to prevent the princes from thinking his motive is ambition or because he is afraid of a revolt from the Apostolic See on the part of the princes. And on this principle the Pope can sometimes depose kings and even set up new kings, as at times has been done. And certainly no one rightly calling himself Christian should deny this power to the Pope. This is the view held by Paludanus and Durandus (*De jurisdictione ecclesiastica*), and by Henricus Gandavensis (*Quodlibeta*, 6, art. 23). It is in this sense, also, that those numerous rules are to be interpreted which say that the Pope has both swords. The earlier doctors make the same assertion, as also does St. Thomas in the second book of the *Sententiae*, as above quoted.

Aye, and there is no doubt that in this way bishops have temporal authority within their bishoprics on the same principle that the Pope has authority in the world. And so they err in speech and in deed, whether princes or magistrates, who strive to prevent bishops from deterring laymen from sin by fines or exile or other temporal punishments. For this is not in excess of their power, provided they do not do it from greed or for gain, but of necessity and for profit in things spiritual. And herein we find a further argument in support of our first conclusion; for if the Pope were lord of the world, a bishop would also be temporal lord in his bishopric, seeing that within his bishopric he also is a vicar of Christ, but this our opponents deny.

Let magistrates and lay princes note this.

6. Fourth conclusion: The Pope has no temporal power over the Indian aborigines or over other unbelievers. This is clear from propositions I and III. For he has no temporal power save such as subserves spiritual matters. But he has no spiritual power over them (*I Corinth.*, ch. 5, v. 12). Therefore he has no temporal power either.

Proposition IV.
Proof 1.

7. The corollary follows that even if the barbarians refuse to recognize any lordship of the Pope, that furnishes no ground for making war on them and seizing their property. This is clear, because he has no such lordship. And it receives manifest confirmation from the fact (as will be asserted below and as our opponents admit) that, even if the barbarians refuse to accept Christ as their lord, this does not justify making war on them or

Corollary.

Confirmation 1.

Absurdity of
the opposite
opinion.

Confirma-
tion 2.

Proof 2, and
with author-
ity.

Proof 3.

Proof 4.

doing them any hurt. Now, it is utterly absurd for our opponents to say that, while the barbarians go scatheless for rejecting Christ, they should be bound to accept His vicar under penalty of war and confiscation of their property, aye, and penal chastisement. And a second confirmation is furnished by the fact that the ground, according to the persons in question, for disallowing compulsion, even if they refuse to accept Christ or His faith, is that it can not be evidently proved to them by natural reasoning. But the lordship of the Pope admits of this proof still less. Therefore they can not be compelled to recognize this lordship.

Again, although Sylvester discourses at great length on the power of the Pope, yet, under the word *infideles* (§ 7), he expressly maintains against Hostiensis that unbelievers can not be compelled by arms to recognize this lordship and can not be deprived of their property on this pretext. And Innocent maintains the same in X, 3, 34, 8. There is also no doubt that this was the opinion of St. Thomas too (*Secunda Secundae*, qu. 66, art. 8, on obj. 2); Cajetan is express thereon, in his comment on the passage where St. Thomas says that unbelievers cannot be deprived of their property, save only that the subjects of temporal princes can be deprived for reasons known to the law and rendering their subjects in general liable to deprivation. Of a truth, Saracens dwelling among Christians have never been deprived of their property on any such pretext or made to suffer any harm. Why, if this pretext be enough to justify making war on them, it is as much as to say that they can be deprived by reason of their unbelief. For it is certain that none of the unbelievers recognize this lordship. But there is no doctor even among our opponents who would allow that they can be deprived on the mere ground of unbelief. Therefore the allegation of the doctors in question is utterly sophistical, namely, that if the unbelievers recognize the lordship of the Roman Pontiff, war can not be made on them, but that it may if they do not recognize it; for none of them does recognize it.

This shows that the title under discussion can not be set up against the barbarians and that Christians have no just cause of war against them either on the ground that the Pope has made a gift of their lands on the footing of absolute lord or that they do not recognize the lordship of the Pope. This is the opinion maintained by Cajetan at considerable length, on *Secunda Secundae*, qu. 66, art. 8, on obj. 2. And the authority of the canonists to the contrary ought not to weigh much, because, as said above, these matters are to be discussed with reference to the divine law, and the majority in numbers and weight hold the contrary view, and among the latter is Joannes Andreae. Our opponents have no text in their favor. And even the weighty authority of the Archbishop of Florence is not to be admitted here, for he followed Augustinus Anconitanus, just as in other places he usually follows the canonists. What has been said demonstrates, then, that at the time of the Spaniards' first voyages to America they took with them no right to occupy the lands of the indigenous population.

Third Title.

Accordingly, there is another title which can be set up, namely, by right of discovery; and no other title was originally set up, and it was in

virtue of this title alone that Columbus the Genoan first set sail. And this seems to be an adequate title because those regions which are deserted become, by the law of nations and the natural law, the property of the first occupant (*Inst.*, 2, 1, 12). Therefore, as the Spaniards were the first to discover and occupy the provinces in question, they are in lawful possession thereof, just as if they had discovered some lonely and thitherto uninhabited region.

Not much, however, need be said about this third title of ours, because, as proved above, the barbarians were true owners, both from the public and from the private standpoint. Now the rule of the law of nations is that what belongs to nobody is granted to the first occupant, as is expressly laid down in the aforementioned passage of the *Institutes*. And so, as the object in question was not without an owner, it does not fall under the title which we are discussing. Although, then, this title, when conjoined with another, can produce some effect here (as will be said below), yet in and by itself it gives no support to a seizure of the aborigines any more than if it had been they who had discovered us.

Accordingly, a fourth title is set up, namely, that they refuse to accept the faith of Christ, although it is set before them and although they have been adjured and advised to accept it. This title might seem to be a lawful one for occupying the lands of the barbarians, firstly, on the ground that the obligation of the aborigines to receive the faith of Christ results from the passage: "Whoso believeth and is baptized shall be saved, but he who believeth not shall be damned."¹ But damnation is not visited on any one except for a mortal sin, and "There is no other name given among men whereby we must be saved" (*Acts*, ch. 4). Therefore, as the Pope is the minister of Christ, at least in things spiritual, it would appear that at any rate by the authority of the Pope they can be compelled to receive the faith of Christ, and if they reject the demand to receive it they may be proceeded against under the law of war. Nay, it would seem that princes may do this on their own authority also, seeing that they are God's ministers (*Romans*, ch. 13), and "revengers [to execute] wrath upon them that do evil." But those, indeed, do evil who do not accept the faith of Christ. Therefore they can be coerced by princes.

Fourth title discussed.

Its lawfulness proven.
Argument 1.

A second argument is: If the French refused to obey their King, the King of Spain could compel them to obedience. Therefore, if the Indian aborigines refuse to obey God, who is their true and supreme Lord, Christian princes can compel them to obedience; for the cause of God ought not to be in worse condition than the cause of men. And this is confirmed, as Scotus (bk. 4, dist. 4, qu. 9) argues about the baptism of the children of unbelievers, by the fact that persons ought to be compelled to obey a superior lord rather than an inferior lord. If, then, compulsion may be employed to make these aborigines obey their chiefs, much more may it be employed to make them obey Christ and God.

Argument 2.

¹*St. Mark*, ch. 16, v. 16.

Argument 3.
St. Thomas,
Secunda Se-
cundae,
qu. 10, art. 8.

A third argument is: If the barbarians publicly blasphemed Christ, they could be compelled by war to cease from such blasphemies, as the doctors admit and as is true. For we could take measures of war against them, if they made a mock of the crucifix or in any other way abused Christian practices by way of insult, as by jesting imitation of the Sacraments of the Church or the like conduct. This is obvious; for if they outraged a Christian sovereign, even one now dead, we could avenge the outrage; much more, then, if they outrage Christ, who is the living King of Christians. This is indubitable; for if Christ were alive in the flesh and pagans wrought an outrage on Him, there is no doubt that we could avenge the outrage by war. So, therefore, in this case. But unbelief is a greater sin than blasphemy, for, as St. Thomas asserts and proves (*Secunda Secundae*, qu. 10, art. 3), unbelief is the gravest of the sins which lie in moral perversity, because it is directly opposed to faith, while blasphemy is not directly opposed to faith, but to the confession of faith. Unbelief cuts at the root of turning to God, that is, at faith, while blasphemy does not. Therefore, seeing that Christians can proceed by war against unbelievers for their blasphemy of Christ, so they can for their unbelief itself. And the contention that blasphemy is not so great a sin as unbelief is confirmed by the fact that unbelief, is, in a Christian, a capital crime by the civil laws, while blasphemy is not. 362

Confirmation.

Certain
propositions
in reply.
Proposi-
tion I.

8. By way of answer let my first proposition be: Before the barbarians heard anything about Christianity, they did not commit the sin of unbelief by not believing in Christ. This proposition is precisely that of St. Thomas in *Secunda Secundae*, qu. 10, art. 1, where he says that in those who have not heard of Christ unbelief does not wear the guise of sin, but rather of punishment, such ignorance of things divine being a consequence of the sin of our first parent. "Such unbelievers as these," says he, "are indeed open to condemnation for other sins, . . . but not for the sin of unbelief." Accordingly our Lord says (*St. John*, ch. 15): "If I had not come and spoken unto them, they had not had sin." St. Augustine, in his exposition of this passage, says it refers to the sin of unbelief in Christ. St. Thomas says the same (*Secunda Secundae*, qu. 10, art. 6, and qu. 34, art. 2, on obj. 2). 363

The contrary
opinion of
Altissiodo-
rensis, and
William of
Paris, and
Gerson, *sc.*
that unbelief
is always a
sin, quoted.

This proposition is opposed to the teaching of many doctors and especially to that of Altissiodorensis, 3 p.,¹ on the question, *Utrum fidei possit subesse falsum*, where he says that ignorance not only of Christ, but of any article of faith is not invincible ignorance in any one, for if a man does what in him lies, God will illuminate him either through the doctor that is within him or through a doctor outside, and so it is always a mortal sin to believe anything contrary to articles of faith. He takes an illustration from an old woman to whom a bishop might preach something contrary to an article of faith. And he lays down the general proposition that ignorance of divine law excuseth none. William of Paris was of the same opinion and supported it by the same kind of argument. For either, says he, such an one does what in him lies and therefore will receive illumina- 364

¹*Summa aurea sententiarum*: Paris edition (1500), fol. cxxxv, col. 4 at end.

tion, or if he does not this, he is without excuse. And Gerson (*De spirituali vita animae*, lect. 4) appears to be of the same view. "Doctors are unanimous," says he, "that in matters of the divine law there is no room for invincible ignorance, seeing that God will always help him who does what in him lies, and He is ready to enlighten the mind as far as will be necessary for salvation and the avoidance of error." And Hugo de Sancto Victore (¹bk. 2, pt. 6, ch. 5) says that none is excused by ignorance for breach of the command to receive baptism, for he could have heard and known, had it not been for his own fault, as was the case with Cornelius (*Acts*, ch. 10).

Hugo de S. Victore, of the same opinion.

Adrian gives precision to this doctrine, in his *Quodlibeta*, qu. 4. "There is," says he, "a two-fold distinction in matters of the divine law. There are some matters to the knowledge of which God does not oblige every one universally, such as the nice problems of the divine law and difficulties with regard to this law and with regard to Holy Scripture and the Commandments; in these matters there may well be a case of invincible ignorance, even if a man does all that in him lies. There are other matters to the knowledge of which God obliges all men generally, such as the articles of faith and the universal commandments of the law; of these it is true, as
365 the doctors assert, that ignorance thereof is not excused. For if any one does what in him lies, he will be illuminated of God through either the doctor that is within him or a doctor from without."

So also in part Adrian.

Nevertheless, the conclusion above stated is entirely in accord with St. Thomas's doctrine. The proof of it is as follows: Such as have never heard anything, however much they may be sinners in other respects, are under an invincible ignorance; therefore, their ignorance is not sin. The antecedent is evident from the passage (*Romans*, ch. 10): "How shall they believe in him of whom they have not heard, and how shall they hear without a preacher?" Therefore, if the faith has not been preached to them, their ignorance is invincible, for it was impossible for them to know. And what Paul condemns in unbelievers is not that they have not done what in them lies in order to receive illumination from God, but that they do not believe after they have heard. "Have they not heard?" says he, "Yes, verily, their sound went into all the earth." That is the ground of his condemnation, inasmuch as the Gospel has been preached over all the earth; he would not otherwise condemn them, whatever other sins they might have.

Rejecting the views of these persons, the author proves his own proposition.

This shows that Adrian was also mistaken in another point, with regard to the subject-matter of their ignorance; for in the same note he says, with regard to the subject-matter of morals, that if a man bestows all industry and diligence in getting to know that which behoves him, this is not enough to procure him an excuse for his ignorance, unless by repentance of his sins
366 he specially prepares himself to be illuminated by God. Suppose, then, a man is in doubt about a certain business arrangement and makes inquiry of learned men and tries in other ways to find out the truth and thinks that the thing is lawful; if it really is not lawful and he does it, he is without

Adrian's mistake about subject-matter of ignorance.

The author's
reasoning
against
Adrian.

excuse, if in another respect he is in sin, because he does not do all that in him lies to conquer his ignorance, and although it be admitted that were he to render himself amenable to grace he would not receive illumination, still he is without excuse so long as he does not remove the hindrance in question, that is, his sin. Accordingly, if Peter and John are in doubt in the same case and business matter and bestow equal human diligence, and each thinks the thing is lawful, but Peter is in grace, while John is in sin, Peter's ignorance is invincible, but John's is vincible, and if they both embark on the business, Peter is excused and John is not. Adrian, I say, makes a mistake here, as I have shown at length in my discussion on *Prima Secundae* on the topic of ignorance. For it would be strange to say that there is no topic of the divine law on which an unbeliever, aye, any one who is in mortal sin, can be invincibly ignorant. Nay, it would follow in the case of the above-named Peter, who was in grace and whose ignorance on some point about usury or simony was invincible, that his ignorance would become vincible merely by his falling into mortal sin, which is absurd.

The author's
opinion what
ignorance is
sin, what is
not. The
author again
confirms his
proposition.

9. I say accordingly on this point that negligence with regard to the 367 subject-matter is requisite for ignorance, even though it be vincible, to be imputed as, and to be, a sin, as, for example, that the man refused to hear or did not believe what he did hear; and on the other hand I say that for invincible ignorance it is enough that the man bestowed human diligence in trying to learn, even if in other respects he is in mortal sin. And so on this point our judgment is the same concerning one in sin and one in grace, both now and immediately after Christ's coming or after His passion. Adrian could not deny that after our Lord's passion the Jews in India or in Spain were invincibly ignorant of His passion, however much they were in mortal sin; nay, he himself has expressly conceded this in his first *quaestio*, fourth point, on the topic *de observantia legalium*. And it is certain that the Jews who were away from Judaea, whether they were in sin or not, had 368 invincible ignorance about baptism and about the faith of Christ. Just as there could at that time be a case of invincible ignorance on this matter, so there may also be nowadays among those who have not had baptism declared to them. But the mistake which the doctors in question make is in thinking that when we postulate invincible ignorance on the subject of baptism or of the Christian faith it follows at once that a person can be saved without baptism or the Christian faith, which, however, does not follow. For the aborigines to whom no preaching of the faith or Christian religion has come will be damned for mortal sins or for idolatry, but not for the sin of unbelief, as St. Thomas (*Secunda Secundae*, as above) says, namely, that if they do what in them lies, accompanied by a good life according to the law of nature, it is consistent with God's providence and He will illuminate them regarding the name of Christ, but it does not therefore follow that if their life be bad, ignorance or unbelief in baptism and the Christian faith may be imputed to them as a sin.

The mistake
of the afore-
named au-
thors ex-
plained.

Proposi-
tion II.

10. Second proposition: The Indians in question are not bound, directly the Christian faith is announced to them, to believe it, in such a

way that they commit mortal sin by not believing it, merely because it has been declared and announced to them that Christianity is the true religion and that Christ is the Saviour and Redeemer of the world, without miracle or any other proof or persuasion. This proposition is proved by the first: Proof.

For if before hearing anything of the Christian religion they were excused, they are put under no fresh obligation by a simple declaration and announcement of this kind, for such announcement is no proof or incentive to belief. Nay, as Cajetan says (on *Secunda Secundae*, qu. 1, art. 4), it would be rash and imprudent for any one to believe anything, especially in matters which concern salvation, unless he knows that this is asserted by a man worthy of credence, a thing which the aboriginal Indians do not know, seeing that they do not know who or what manner of men they are who are announcing the new religion to them. And this is confirmed by what St. Thomas says (*Secunda Secundae*, qu. 1, art. 4, on obj. 2, and art. 5, on obj. 1), namely, that matters of faith are seen and become evident by reason of their credibility. For a believer would not believe unless he saw that the things were worthy of belief either because of the evidence of signs or for some other reason of this kind. Therefore, where there are no such signs nor anything else of persuasive force, the aborigines are not bound to believe. And this is confirmed by the consideration that if the Saracens were at the same time to set their creed before them in the same way and without anything more, like the Christians, they would not be bound to believe them, as is certain. Therefore they are not bound to believe the Christians either, when without any moving or persuasive accompaniments they set the faith before them, for they are unable, and are not bound, to guess which of the two is the truer religion, unless a greater weight of probability be apparent on one side. For this would be to believe hastily, which is a mark of levity of heart, as *Ecclesiasticus*, ch. 19, says. Further confirmation is furnished by the passage in *St. John*, ch. 15: "If I had not wrought signs," etc., "they would not have had sin." Therefore, where there are no signs, and nothing to induce belief, there will be no sin. Confirmation 1.

370 11. From this proposition it follows that, if the faith be presented to the Indians in the way named only and they do not receive it, the Spaniards can not make this a reason for waging war on them or for proceeding against them under the law of war. This is manifest, because they are innocent in this respect and have done no wrong to the Spaniards. And this corollary receives confirmation from the fact that, as St. Thomas lays it down (*Secunda Secundae*, qu. 40, art. 1), for a just war "there must be a just cause, namely, they who are attacked for some fault must deserve the attack." Accordingly, St. Augustine says (*Liber 83 Quaestionum*): "It is involved in the definition of a just war that some wrong is being avenged, as where a people or state is to be punished for neglect to exact amends from its citizens for their wrongdoing or to restore what has been wrongfully taken away." Where, then, no wrong has previously been committed by the Indians, there is no cause of just war. This is the received opinion of all the doctors, not only of the theologians, but also of the jurists, such as Confirmation 2.

Confirmation 3.

Corollary.

Proposition proved from the common opinion of the doctors.

Hostiensis, Innocent, and others. Cajetan (*Secunda Secundae*, qu. 66, art. 8) lays it down clearly and I know of no doctor whose opinion is to the contrary. Therefore this would not be a legitimate title to seize the lands of the aborigines or to despoil the former owners.

Proposition III.

Proof 1.

Proof 2.

Proposition IV.

Proposition V.

Proposition VI.

Proof 1.

12. Third proposition: If the Indians, after being asked and admonished 371 to hear the peaceful preachers of religion, refused, they would not be excused of mortal sin. The proof lies in the supposition that they have very grave errors for which they have no probable or demonstrable reasons. Therefore, if any one admonishes them to hear and deliberate upon religious matters, they are bound at least to hear and to enter into consultation. Further, it is needful for their salvation that they believe in Christ and be baptized (*St. Mark*, last ch.), "Whoso believeth," etc. But they can not believe unless they hear (*Romans*, ch. 10). Therefore they are bound to hear, otherwise if they are not bound to hear, they would, without their own fault, be outside the pale of salvation.

13. Fourth proposition: If the Christian faith be put before the aborigines with demonstration, that is, with demonstrable and reasonable arguments, and this be accompanied by an upright life, well-ordered according to the law of nature (an argument which weighs much in confirmation of the truth), and this be done not once only and perfunctorily, but diligently and zealously, the aborigines are bound to receive the faith of Christ under penalty of mortal sin. This is proved by our third proposition, for, if they are bound to hear, they are in consequence bound also to acquiesce in what they hear, if it be reasonable. This is abundantly clear from the passage (*St. Mark*, last ch.): "Go ye out into all the world, preach the Gospel to every creature; whoso believeth and is baptized shall be saved, but whoso 372 believeth not shall be damned"; and by the passage (*Acts*, ch. 4): "No other name is given unto man whereby we can be saved."

14. Fifth proposition: It is not sufficiently clear to me that the Christian faith has yet been so put before the aborigines and announced to them that they are bound to believe it or commit fresh sin. I say this because (as appears from my second proposition) they are not bound to believe unless the faith be put before them with persuasive demonstration. Now, I hear of no miracles or signs or religious patterns of life; nay, on the the other hand, I hear of many scandals and cruel crimes and acts of impiety. Hence it does not appear that the Christian religion has been preached to them with such sufficient propriety and piety that they are bound to acquiesce in it, although many religious and other ecclesiastics seem both by their lives and example and their diligent preaching to have bestowed sufficient pains and industry in this business, had they not been hindered therein by others who had other matters in their charge.

15. Sixth proposition: Although the Christian faith may have been announced to the Indians with adequate demonstration and they have refused to receive it, yet this is not a reason which justifies making war on them and depriving them of their property. This conclusion is definitely stated by St. Thomas (*Secunda Secundae*, qu. 10, art. 8), where he says that

373 unbelievers who have never received the faith, like Gentiles and Jews, are in no wise to be compelled to do so. This is the received conclusion of the doctors alike in the canon law and the civil law. The proof lies in the fact that belief is an operation of the will. Now, fear detracts greatly from the voluntary (*Ethics*, bk. 3), and it is a sacrilege to approach under the influence of servile fear as far as the mysteries and sacraments of Christ. Our conclusion is also proved by the canon *de Judaeis* (can. 5, Dist. 45), which says: "The holy synod also enjoins concerning the Jews that thenceforth force be not applied to any of them to make him believe; 'for God has compassion on whom He wills, and whom He wills He hardens.'"¹ There is no doubt about the doctrine of the Council of Toledo, that threats and fears should not be employed against the Jews in order to make them receive the faith. And Gregory expressly says the same in the canon *qui sincera* (can. 3, Dist. 45): "Who with sincerity of purpose," says he, "desires to bring into the perfect faith those who are outside the Christian religion should labor in a manner that will attract and not with severity; . . . for whosoever does otherwise and under cover of the latter would turn them from their accustomed worship and ritual is demonstrably furthering his own end thereby and not God's end."

Proof 2.

Proof 3.

Our proposition receives further proof from the use and custom of the Church. For never have Christian Emperors, who had as advisors the most holy and wise Pontiffs, made war on unbelievers for their refusal to accept the Christian religion. Further, war is no argument for the truth of the Christian faith. Therefore the Indians can not be induced by war to believe, but rather to feign belief and reception of the Christian faith, which is monstrous and a sacrilege. And although Scotus (Bk. 4, dist. 4, last qu.) calls it a religious act for princes to compel unbelievers by threats and fears to receive the faith, yet he seems to mean this to apply only to unbelievers who in other respects are subjects of Christian princes (with whom we will deal later on). Now, the Indians are not such subjects. Hence, I think that Scotus does not make this assertion applicable to their case. It is clear, then, that the title which we are now discussing is not adequate and lawful for the seizure of the lands of the aborigines.

Proof 4.

Proof 5.

The opinion of Scotus hereon set forth.

Another, and a fifth, title is seriously put forward, namely, the sins of these Indian aborigines. For it is alleged that, though their unbelief or their rejection of the Christian faith is not a good reason for making war on them, yet they may be attacked for other mortal sins which (so it is said) they have in numbers, and those very heinous. A distinction is here drawn with regard to mortal sins, it being asserted that there are some sins, which are not against the law of nature, but only against positive divine law, and for these the aborigines can not be attacked in war, while there are other sins against nature, such as cannibalism, and promiscuous intercourse with mother or sisters and with males, and for these they can be attacked in war and so compelled to desist therefrom. The principle in each case is that, in the case of sins which are against positive law, it can not be clearly

The fifth title discussed.

¹Romans, ch. 9, v. 18.

Statement
and explanation
of the
opinion of the
Archbishop,
Augustinus
of Ancona,
Sylvester
and Innocent
that this is a
lawful title.

shown to the Indians that they are doing wrong, whereas in the case of the sins which are against the law of nature, it can be shown to them that they are offending God, and they may consequently be prevented from continuing to offend Him. Further they can be compelled to keep the law which they themselves profess. Now, this law is the law of nature. Therefore. This is the opinion of the Archbishop of Florence (pt. 3, tit. 22, ch. 5, § 8), following Augustinus Anconitanus, and of Sylvester (under the word *Papa*, § 7); and it is the opinion of Innocent in *X*, 3, 34, 8, where he expressly says: "I hold that if the Gentiles who have no other law than the law of nature break that law, they can be punished by the Pope. This is shown by the case of the men of Sodom, who were punished by God (*Genesis*, ch. 19). Now, the judgments of God are examples unto us, and so I do not see why the Pope, who is the vicar of Christ, can not do this." This is what Innocent said. And on the same principle the Indians can be punished by Christian princes under the authority of the Pope.

The author's
answer.

Proof 1.

Proof 2.

16. I, however, assert the following proposition: Christian princes can not, even by the authorization of the Pope, restrain the Indians from sins against the law of nature or punish them because of those sins. My 376 first proof is that the writers in question build on a false hypothesis, namely, that the Pope has jurisdiction over the Indian aborigines, as said above. My second proof is as follows: They mean to justify such coercion either universally for sins against the law of nature, such as theft, fornication, and adultery, or particularly for sins against nature, such as those which St. Thomas deals with (*Secunda Secundae*, qu. 154, arts. 11, 12), the phrase "sin against nature" being employed not only of what is contrary to the law of nature, but also of what is against the natural order and is called uncleanness in II *Corinthians*, ch. 12, according to the commentators, such as intercourse with boys and with animals or intercourse of woman with woman, whereon see *Romans*, ch. 1. Now, if they limit themselves to the second meaning, they are open to the argument that homicide is just as grave a sin, and even a graver sin, and, therefore, it is clear that, if it is lawful in the case of the sins of the kind named, therefore it is lawful also in the case of homicide. Similarly, blasphemy is a sin as grave and so the same is clear; therefore. If, however, they are to be understood in the first sense, that is, as speaking of all sin against the law of nature, the argument against them is that the coercion in question is not lawful for fornication; therefore not for the other sins which are contrary to the law of nature. The antecedent is clear from I *Corinthians*, ch. 5: "I wrote to you in an epistle not to company with fornicators," and besides "If any brother among you is called a fornicator or an idolater," etc.; and lower down: "For what have I to do to judge them also that are without?" Whereon 377 St. Thomas says: "The prelates have received power over those only who have submitted themselves to the faith." Hence it clearly appears that St. Paul declares it not his business to pronounce judgment on unbelievers and fornicators and idolaters. So also it is not every sin against the law of nature that can be clearly shown to be such, at any rate to every one.

Further, this is as much as to say that the aborigines may be warred into subjection because of their unbelief, for they are all idolaters. Further, the Pope can not make war on Christians on the ground of their being fornicators or thieves or, indeed, because they are sodomites; nor can he on that ground confiscate their land and give it to other princes; were that so, there would be daily changes of kingdoms, seeing that there are many sinners in every realm. And this is confirmed by the consideration that these sins are more heinous in Christians, who are aware that they are sins, than in barbarians, who have not that knowledge. Further, it would be a strange thing that the Pope, who can not make laws for unbelievers, can yet sit in judgment and visit punishment upon them. Confirmation.

A further and convincing proof is the following: The aborigines in question are either bound to submit to the punishment awarded to the sins in question or they are not. If they are not bound, then the Pope can not award such punishment. If they are bound, then they are bound to recognize the Pope as lord and lawgiver. Therefore, if they refuse such recognition, this in itself furnishes a ground for making war on them, which, however, the writers in question deny, as said above. And it would indeed be strange that the barbarians could with impunity deny the authority and jurisdiction of the Pope, and yet that they should be bound to submit to his award. Further, they who are not Christians can not be subjected to the judgment of the Pope, for the Pope has no other right to condemn or punish them than as vicar of Christ. But, the writers in question admit—both Innocent and Augustinus of Ancona, and the Archbishop and Sylvester, too—that they can not be punished because they do not receive Christ. Therefore not because they do not receive the judgment of the Pope, for the latter presupposes the former. Proof 3.

The insufficiency alike of this present title and of the preceding one, is shown by the fact that, even in the Old Testament, where much was done by force of arms, the people of Israel never seized the land of unbelievers either because they were unbelievers or idolaters or because they were guilty of other sins against nature (and there were people guilty of many such sins, in that they were idolaters and committed many other sins against nature, as by sacrificing their sons and daughters to devils), but because of either a special gift from God or because their enemies had hindered their passage or had attacked them. Further, what is it that the writers in question call a profession of the law of nature? If it is mere knowledge, they do not know it all; if it is a mere willingness to observe the law of nature, then the retort is that they are also willing to observe the whole divine law; for, if they knew that the law of Christ was divine, they would be willing to observe it. Therefore, they make no more a profession of the law of nature than they make of the law of Christ. Further, we certainly possess clearer proofs whereby to demonstrate that the law of Christ is from God and is true than to demonstrate that fornication is wrong or that other things which are also forbidden by natural law are to be shunned.* Proof 4.

Refutation common to this and the just preceding title. 1.

*Otherwise to be blamed.

Therefore, if the Indians can be compelled to observe the law of nature because it admits of proof, they can therefore, be compelled to observe the Gospel law.

Sixth title set out.

There remains another, a sixth title, which is put forward, namely, by voluntary choice. For on the arrival of the Spaniards we find them declaring to the aborigines how the King of Spain has sent them for their good and admonishing them to receive and accept him as lord and king; and the aborigines replied that they were content to do so. Now, "there is nothing so natural as that the intent of an owner to transfer his property to another should have effect given to it" (*Inst.*, 2, 1, 40). I, however, assert the proposition that this title, too, is insufficient. This appears, in the first place, because fear and ignorance, which vitiate every choice, ought to be absent. But they were markedly operative in the cases of choice and acceptance under consideration, for the Indians did not know what they were doing; nay, they may not have understood what the Spaniards were seeking. Further, we find the Spaniards seeking it in armed array from an unwarlike and timid crowd. Further, inasmuch as the aborigines, as said above, had real lords and princes, the populace could not procure new lords without other reasonable cause, this being to the hurt of their former lords. Further, on the other hand, these lords themselves could not appoint a new prince without the assent of the populace. Seeing, then, that in such cases of choice and acceptance as these there are not present all the requisite elements of a valid choice, the title under review is utterly inadequate and unlawful for seizing and retaining the provinces in question.

Seventh title.

There is a seventh title which can be set up, namely, by special grant from God. For some (I know not who) assert that the Lord by His especial judgment condemned all the barbarians in question to perdition because of their abominations and delivered them into the hands of the Spaniards, just as of old He delivered the Canaanites into the hands of the Jews. I am loath to dispute hereon at any length, for it would be hazardous to give credence to one who asserts a prophecy against the common law and against the rules of Scripture, unless his doctrine were confirmed by miracles. Now, no such are adduced by prophets of this type. Further, even assuming that it is true that the Lord had determined to bring the barbarians to perdition, it would not follow, therefore, that he who wrought their ruin would be blameless, any more than the Kings of Babylon who led their army against Jerusalem and carried away the children of Israel into captivity were blameless, although in actual fact all of this was by the especial providence of God, as had often been foretold to them. Nor was Jeroboam right in drawing Israel away from Rehoboam, although this was done by God's design, as the Lord had also threatened by his prophet. And, would that, apart from the sin of unbelief, there might be no greater sins in morals among certain Christians than there are among those barbarians! It is also written (I *St. John*, ch. 4): "Believe not every spirit, but try the spirits whether they be of God;" and as St. Thomas says (*Prima Secundae*, qu. 68),

The author's refutation.

1.

2.

3.

4.

"Gifts are given by the Holy Spirit for the perfecting of virtues." Accordingly, where faith or authority or providence shows what ought to be done, recourse should not be had to gifts.

Let this suffice about false and inadequate titles to seize the lands of the Indians. But it is to be noted that I have seen nothing written on this question and have never been present at any discussion or council on this matter. Hence it may be that others may found a title and base the
382 justice of this business and overlordship on some of the passages cited and not lack reason in so doing. I, however, have up to now been unable to form any other opinion than what I have written. And so, if there be no other titles than those which I have discussed, it would certainly be of ill omen for the safety of our princes, or rather of those who are charged with the discovery of these matters; for princes follow advice given by others, being unable to examine into these matters for themselves. "What is a man advantaged" so saith the Lord, "if he gain the whole world and lose himself, or be cast away?" (*St. Matthew*, ch. 16; *St. Mark*, ch. 8; *St. Luke*, ch. 9.)

The author
~~excuses~~
himself.

SUMMARY OF THE THIRD SECTION.

On the lawful titles whereby the aborigines of America could have come into the power of Spain.

1. How the aborigines might have come into the power of the Spaniards on the ground of natural society and fellowship.
2. The Spaniards have a right to travel to the lands of the Indians and to sojourn there so long as they do no harm, and they can not be prevented by the 383 Indians.
3. The Spaniards may carry on trade among the Indian aborigines, so long as they do no harm to their own country, by importing the goods which the aborigines lack, etc., and taking away gold and silver and other articles in which the Indians abound; and the princes of the Indians can not prevent their subjects from trading with the Spaniards, etc.
4. The Indians can not prevent the Spaniards from a communication and participation in those things which they treat as common alike to natives and to strangers.
5. Any children born to Spanish parents domiciled in those parts who wish to become citizens thereof can not be excluded from citizenship or from the advantages enjoyed by other citizens.
6. What course ought to be adopted if the aborigines desire to prevent the Spaniards trading with them, etc.
7. If the Spaniards, after resort to all moderate measures, can not attain security among the aborigines or Indians save by seizing their cities and reducing them to subjection, whether they can lawfully do this.
8. When and in what case the Spaniards can resort to severe measures against the 384 Indians, treating them as faithless foes, and employ all the rights of war against them and take away their property and even reduce them to captivity, aye, and depose their former lords also and set up new lords.
9. Whether the Indians could have come under the sway of the Spaniards, in the interest of the spread of Christianity. Christians have a right to preach and publish the Gospel in the lands of barbarians.
10. The Pope could entrust to the Spaniards alone the task of converting the Indian aborigines and could forbid to all others not only preaching, but trade too, if the propagation of Christianity would thus be furthered.
11. The Indians are not to be warred into subjection or despoiled of their property, if they give the Spaniards unhindered freedom to preach the Gospel, and this whether they accept the faith or not.
12. How the aborigines who hinder the spread of the Gospel, whether it be their lords or the populace, may be coerced by the Spaniards, so long as no scandal is caused. And what is to be said of those who, while admitting preaching, prevent conversion, either by killing or punishing or terrorizing 385 those who have been converted to Christianity?
13. How the Indians might have come under the sway of the Spaniards by the fact that, when they had been converted and become Christians, their princes desired to bring them back to idolatry by force or by fear, and so they were taken into the protection and guardianship of the Spaniards.
14. The Indians might have come under the sway of the Spaniards by the fact that, after the conversion of a large part of them to Christianity, the Pope, either with or without a request on their part, might on reasonable grounds have given them a Christian prince, such as the King of Spain, and driven out their infidel lords.

15. Whether the Indians could have come under the sway of the Spaniards because of the tyranny of their lords or because of tyrannical laws which injured innocent folk.
16. The Indian aborigines could have come under the sway of the Spaniards through true and voluntary choice.
17. The Indians might have come under the sway of the Spaniards by a title of alliance and friendship.
18. Whether the Spaniards could have reduced the Indians into their power, if it were certainly clear that they were of defective intelligence.

386 I will now speak of the lawful and adequate titles whereby the Indians might have come under the sway of the Spaniards. (1) The first title to be named is that of natural society and fellowship. And hereon let my first conclusion be: (2) The Spaniards have a right to travel into the lands in question and to sojourn there, provided they do no harm to the natives, and the natives may not prevent them. Proof of this may in the first place be derived from the law of nations (*jus gentium*), which either is natural law or is derived from natural law (*Inst.*, I, 2, 1): "What natural reason has established among all nations is called the *jus gentium*." For, congruently herewith, it is reckoned among all nations inhumane to treat visitors and foreigners badly without some special cause, while, on the other hand, it is humane and correct to treat visitors well; but the case would be different, if the foreigners were to misbehave when visiting other nations.

The first lawful title.
Proposition I.

Proof 1.

Secondly, it was permissible from the beginning of the world (when everything was in common) for any one to set forth and travel wheresoever he would. Now this was not taken away by the division of property, for it was never the intention of peoples to destroy by that division the reciprocity and common user which prevailed among men, and indeed in the days of Noah it would have been inhumane to do so.

Proof 2.

387 Thirdly, everything is lawful which is not prohibited or which is not injurious or hurtful to others in some other way. But (so we suppose) the travel of the Spaniards does no injury or harm to the natives. Therefore it is lawful.

Proof 3.

Fourthly, it would not be lawful for the French to prevent the Spanish from traveling or even from living in France, or vice versa, provided this in no way enured to their hurt and the visitors did no injury. Therefore it is not lawful for the Indians.

Proof 4.

Further, fifthly, banishment is one of the capital forms of punishment. Therefore it is unlawful to banish strangers who have committed no fault.

Proof 5.

Further, sixthly, to keep certain people out of the city or province as being enemies, or to expel them when already there, are acts of war. Inasmuch, then, as the Indians are not making a just war on the Spaniards (it being assumed that the Spaniards are doing no harm), it is not lawful for them to keep the Spaniards away from their territory.

Proof 6.

Further, seventhly, there is the Poet's verse,

Proof 7.

Quod genus hoc hominum? quaeve hunc tam barbara morem
Permittit patria? hospitio prohibemur arenae.

[What race of men is this? or what country is barbarous enough to allow this usage? We are driven off from the hospitality of its shore.]

- Proof 8. Also, eighthly, "Every animal loveth its kind" (*Ecclesiasticus*, ch. 15). Therefore, it appears that friendship among men exists by natural law and it is against nature to shun the society of harmless folk.
- Proof 9. Also, ninthly, there is the passage (*St. Matthew*, ch. 25): "I was a stranger and ye took me not in." Hence, as the reception of strangers seems to be by natural law, that judgment of Christ will be pronounced with universal application. 388
- Proof 10. Tenthly, "by natural law running water and the sea are common to all, so are rivers and harbors, and by the law of nations ships from all parts may be moored there" (*Inst.*, 2, 1); and on the same principle they are public things. Therefore it is not lawful to keep any one from them. Hence it follows that the aborigines would be doing a wrong to the Spaniards, if they were to keep them from their territories.
- Proof 11. Also, eleventhly, these very persons admit all other barbarians from all parts. Therefore, they would be doing a wrong, if they were not to admit the Spaniards.
- Proof 12. Also, twelfthly, if it were not lawful for the Spaniards to travel among them, this would be either by natural law or by divine law or by human law. Now, it is certainly lawful by natural and by divine law. And if there were any human law which without any cause took away rights conferred by natural and divine law, it would be inhumane and unreasonable and consequently would not have the force of law.
- Proof 13. Thirteenthly, either the Spaniards are subjects of the Indians or they are not. If they are not, then the Indians can not keep them away. If they are, then the Indians ought to treat them well.
- Proof 14. Also, fourteenthly, the Spaniards are the neighbors of the barbarians, as appears from the Gospel parable of the Samaritan (*St. Luke*, ch. 10). But they are bound to love their neighbors as themselves (*St. Matthew*, ch. 22). Therefore they may not keep them away from their country without cause: "When it is said 'Love thy neighbour,' it is clear that every man is 389 our neighbour" (*St. Augustine's De doctrina Christiana*).
- Proposition II. 3. Second proposition: The Spaniards may lawfully carry on trade among the native Indians, so long as they do no harm to their country, as, for instance, by importing thither wares which the natives lack and by exporting thence either gold or silver or other wares of which the natives have abundance. Neither may the native princes hinder their subjects from carrying on trade with the Spanish; nor, on the other hand, may the princes of Spain prevent commerce with the natives. This is proved by means of my first proposition.
- Proof 1. Firstly, because it is an apparent rule of the *jus gentium* that foreigners may carry on trade, provided they do no hurt to citizens.
- Proof 2. Also, secondly, a similar proof lies in the fact that this is permitted by the divine law. Therefore a law prohibiting it would undoubtedly not be reasonable.
- Proof 3. Also, thirdly, the sovereign of the Indians is bound by the law of nature to love the Spaniards. Therefore the Indians may not causelessly prevent

the Spaniards from making their profit where this can be done without injury to themselves.

A fourth reason is that such conduct would be against the proverb: *Proof 4.*
 "Thou shalt not do to another what thou wouldest not wish done to thyself."

And, in sum, it is certain that the aborigines can no more keep off the *Proof 5.*
 Spaniards from trade than Christians can keep off other Christians. Now, it is clear that if the Spaniards kept off the French from trade with the Spaniards, and this not for the good of Spain, but in order to prevent the French
 390 from sharing in some advantage, that practice would offend against righteousness and charity. If, then, there can be no just legal ordinance to this effect, it also can not be accomplished in actual fact (for the injustice of a law consists solely in the execution of the law). And, as is said in *Dig.*, I, I, 3, "Nature has established a bond of relationship between all men," and so it is contrary to natural law for one man to dissociate himself from another without good reason. "Man," says Ovid, "is not a wolf to his fellow man, but a man."

4. Third proposition: If there are among the Indians any things which *Proposition III.*
 are treated as common both to citizens and to strangers, the Indians may not prevent the Spaniards from a communication and participation in them. If, for example, other foreigners are allowed to dig for gold in the land of the community or in rivers, or to fish for pearls in the sea or in a river, the natives can not prevent the Spaniards from doing this, but they have the same right to do it as others have, so long as the citizens and indigenous population are not hurt thereby. This is proved by my first and second propositions. *Proof 1.*
 For if the Spaniards may travel and trade among them, they may consequently make use of the laws and advantages enjoyed by all foreigners.

Secondly, inasmuch as things that belong to nobody are acquired by *Proof 2.*
 the first occupant according to the law of nations (*Inst.*, 2, I, 12), it follows that if there be in the earth gold or in the sea pearls or in a river anything
 391 else which is not appropriated by the law of nations those will vest in the first occupant, just as the fish in the sea do. And, indeed, there are many things in this connection which issue from the law of nations, which, because it has a sufficient derivation from natural law, is clearly capable of conferring rights and creating obligations. And even if we grant that it is not always derived from natural law, yet there exists clearly enough a consensus of the greater part of the whole world, especially in behalf of the common good of all. For if after the early days of the creation of the world or its recovery from the flood the majority of mankind decided that ambassadors should everywhere be reckoned inviolable and that the sea should be common and that prisoners of war should be made slaves, and if this, namely, that strangers should not be driven out, were deemed a desirable principle, it would certainly have the force of law, even though the rest of mankind objected thereto.

5. Fourth proposition: If children of any Spaniard be born there and *Proposition IV.*
 they wish to acquire citizenship, it seems they can not be barred either from citizenship or from the advantages enjoyed by other citizens—I refer to the

Proof. case where the parents had their domicile there. The proof of this is furnished by the rule of the law of nations, that he is to be called and is a citizen who is born within the state (*Cod.*, 7, 62, 11). And the confirmation lies in the fact that, as man is a civil animal, whoever is born in any one state is not a citizen of another state. Therefore, if he were not a citizen of the state referred to, he would not be a citizen of any state, to the prejudice of his rights under both natural law and the law of nations. Aye, and if there be any persons who wish to acquire a domicile in some state of the Indians, as by marriage or in virtue of any other fact whereby other foreigners are wont to become citizens, they can not be impeded any more than others, and consequently they enjoy the privileges of citizens just as others do, provided they also submit to the burdens to which others submit. And the passages wherein hospitality is commended are to the same effect (I *St. Peter*, ch. 4): "Use hospitality one to another"; and (I *Timothy*, ch. 3, about a bishop): "A bishop must be given to hospitality." Hence, on the other hand, refusal to receive strangers and foreigners is wrong in itself.

Proposition V. 6. Fifth proposition: If the Indian natives wish to prevent the Spaniards from enjoying any of their above-named rights under the law of nations, for instance, trade or other above-named matter, the Spaniards ought in the first place to use reason and persuasion in order to remove scandal and ought to show in all possible methods that they do not come to the hurt of the natives, but wish to sojourn as peaceful guests and to travel without doing the natives any harm; and they ought to show this not only by word, but also by reason, according to the saying, "It behoveth the prudent to make trial of everything by words first." But if, after this recourse to reason, the barbarians decline to agree and propose to use force, the Spaniards can defend themselves and do all that consists with their own safety, it being lawful to repel force by force. And not only so, but, if safety can not otherwise be had, they may build fortresses and defensive works, and, if they have sustained a wrong, they may follow it up with war on the authorization of their sovereign and may avail themselves of the other rights of war. The proof hereof lies in the fact that warding-off and avenging a wrong make a good cause of war, as said above, following St. Thomas (*Secunda Secundæ*, qu. 40). But when the Indians deny the Spaniards their rights under the law of nations they do them a wrong. Therefore, if it be necessary, in order to preserve their right, that they should go to war, they may lawfully do so.

Note! It is, however, to be noted that the natives being timid by nature and in other respects dull and stupid, however much the Spaniards may desire to remove their fears and reassure them with regard to peaceful dealings with each other, they may very excusably continue afraid at the sight of men strange in garb and armed and much more powerful than themselves. And therefore, if, under the influence of these fears, they unite their efforts to drive out the Spaniards or even to slay them, the Spaniards might, indeed, defend themselves but within the limits of permissible self-protection, and it would not be right for them to enforce against

the natives any of the other rights of war (as, for instance, after winning the victory and obtaining safety, to slay them or despoil them of their goods or seize their cities), because on our hypothesis the natives are innocent and are justified in feeling afraid. Accordingly, the Spaniards ought to defend themselves, but so far as possible with the least damage to the natives, the war being a purely defensive one.

There is no inconsistency, indeed, in holding the war to be a just war on both sides, seeing that on one side there is right and on the other side there is invincible ignorance. For instance, just as the French hold the province of Burgundy with demonstrable ignorance, in the belief that it belongs to them, while our Emperor's right to it is certain, and he may make war to regain it, just as the French may defend it, so it may also befall in the case of the Indians—a point deserving careful attention. For the rights of war which may be invoked against men who are really guilty and lawless differ from those which may be invoked against the innocent and ignorant, just as the scandal of the Pharisees is to be avoided in a different way from that of the self-distrustful and weak.

Sometimes a war is a just war on both sides.

7. Sixth proposition: If after recourse to all other measures, the Spaniards are unable to obtain safety as regards the native Indians, save by seizing their cities and reducing them to subjection, they may lawfully proceed to these extremities. The proof lies in the fact that "peace and safety are the end and aim of war," as St. Augustine says, writing to Boniface. And since it is now lawful for the Spaniards, as has been said, to wage defensive war or even if necessary offensive war, therefore, everything necessary to secure the end and aim of war, namely, the obtaining of safety and peace, is lawful.

Proposition VI.

Proof.

8. Seventh proposition: If, after the Spaniards have used all diligence, both in deed and in word, to show that nothing will come from them to interfere with the peace and well-being of the aborigines, the latter nevertheless persist in their hostility and do their best to destroy the Spaniards, then they can make war on the Indians, no longer as on innocent folk, but as against forsworn enemies, and may enforce against them all the rights of war, despoiling them of their goods, reducing them to captivity, deposing their former lords and setting up new ones, yet withal with observance of proportion as regards the nature of the circumstances and of the wrongs done to them. This conclusion is sufficiently apparent from the fact that, if it be lawful to declare the war, it is consequently lawful to pursue the rights of war. And it is confirmed by the consideration that the aborigines ought not to hold a better position merely because they are unbelievers. But all the things enumerated would be lawful against Christians, when once a just war has arisen. Therefore they are lawful against the aborigines, too. Also, it is a universal rule of the law of nations that whatever is captured in war becomes the property of the conqueror, as is laid down in *Dig.*, 49, 15, 28 and 24, and in *Decretum*, pt. 1, dist. 1, can. 9, and more expressly in *Inst.*, 2, 1, 17, where it is said that "by the law of nations whatever we take from the enemy becomes ours at once,

Proposition VII.

Proof 1.

Proof 2.

to such an extent that even men may be brought into slavery to us." Further (as the doctors say on the topic of war), a prince who has on hand a just war is *ipso jure* the judge of his enemies and can inflict a legal punishment on them, condemning them according to the scale of their wrongdoing. Everything said above receives confirmation from the fact that ambassadors are by the law of nations inviolable and the Spaniards are the ambassadors of Christian peoples. Therefore, the native Indians are bound to give them, at least, a friendly hearing and not to repel them. This, then, is the first title which the Spaniards might have for seizing the provinces and sovereignty of the natives, provided the seizure be without guile or fraud and they do not look for imaginary causes of war. For if the natives allow the Spaniards to traffic peaceably among them, the Spaniards could not allege in this connection any just cause for seizing their goods any more than the goods of Christians.

9. Another possible title is by way of propagation of Christianity. In this connection let my first proposition be: Christians have a right to preach and declare the Gospel in barbarian lands. This proposition is manifest from the passage: "Preach the Gospel to every creature," etc.,¹ and also, "The word of the Lord is not bound" (II *Timothy*, ch. 2). Secondly, our proposition is clear from what has been already said, for if the Spaniards have a right to travel and trade among the Indians, they can teach the truth to those willing to hear them, especially as regards matters pertaining to salvation and happiness, much more than as regards matters pertaining to any human subject of instruction. Thirdly, because the natives would otherwise be outside the pale of salvation, if Christians were not allowed to go to them carrying the Gospel message. Fourthly, because brotherly correction is required by the law of nature, just as brotherly love is. Since, then, the Indians are all not only in sin, but outside the pale of salvation, therefore, it concerns Christians to correct and direct them; nay, it seems that they are bound to do so. Fifthly and lastly, because they are our neighbors, as said above: "Now the Lord has laid a command on everyone concerning his neighbour" (*Ecclesiasticus*, ch. 17). Therefore it concerns Christians to instruct those who are ignorant of these supremely vital matters.

10. Second proposition: Although this is a task common and permitted to all, yet the Pope might entrust it to the Spaniards and forbid it to all others. The proof is in the fact that, although (as said above) the Pope is not temporal lord, yet he has power in matters temporal when this would subserve matters spiritual. Therefore, as it is the Pope's concern to bestow especial care on the propagation of the Gospel over the whole world, he can entrust it to the Spaniards to the exclusion of all others, if the sovereigns of Spain could render more effective help in the spread of the Gospel in those parts; and not only could the Pope forbid others to preach, but also to trade there, if this would further the propagation of Christianity, for he can order temporal matters in the manner which is most helpful to spiritual

¹*St. Mark*, ch. 16, v. 15.

398 matters. And if in this case that is how spiritual matters would be best helped, it consequently falls within the authority and power of the supreme Pontiff. But it seems that in this case this is the course most conducive to spiritual welfare, because, if there was to be an indiscriminate inrush of Christians from other parts to the part in question, they might easily hinder one another and develop quarrels, to the banishment of tranquillity and the disturbance of the concerns of the faith and of the conversion of the natives. Further, inasmuch as it was the sovereigns of Spain who were the first to patronize and pay for the navigation of the intermediate ocean, and as they then had the good fortune to discover the New World, it is just that this travel should be forbidden to others and that the Spaniards should enjoy alone the fruits of their discovery. For, just as in the interests of the preservation of the peace among princes and of the spread of religion the Pope could make such a distribution of the land of the Saracens among Christian princes as would prevent one from crossing over the lands of another, so also for the good of religion he could appoint princes, especially where there were aforesaid no Christian princes. Proof 2.

11. Third proposition: If the Indians allow the Spaniards freely and without hindrance to preach the Gospel, then whether they do or do not receive the faith, this furnishes no lawful ground for making war on them and seizing in any other way their lands. This has been proved above,¹ where we confuted the fourth alleged title, and it is self-evident, seeing 399 that there can not be a just war where no wrong has previously been done (*Secunda Secundae*, qu. 40, art. 1). Proposition III.

12. Fourth proposition: If the Indians—whether it be their lords or the populace—prevent the Spaniards from freely preaching the Gospel, the Spaniards, after first reasoning with them in order to remove scandal, may preach it despite their unwillingness and devote themselves to the conversion of the people in question, and if need be they may then accept or even make war, until they succeed in obtaining facilities and safety for preaching the Gospel. And the same pronouncement must be made in the case where they allow preaching, but hinder conversion either by killing or otherwise punishing those who have been converted to Christ or by deterring others by threats and fears. This is clear, because herein the Indians would be doing an injury to the Spaniards (as appears from what has already been said) and these would have a just cause of war. A second reason is that an obstacle would thereby be put in the way of the welfare of the Indians themselves such as their princes have no right to put there. Therefore, in favor of those who are oppressed and suffer wrong, the Spaniards can make war, especially as such vitally important interests are at stake. This proposition demonstrates that, if there is no other way to carry on the work of religion, this furnishes the Spaniards with another justification for seizing the lands and territory of the natives and for setting 400 up new lords there and putting down the old lords and doing in right of war everything which it is permitted in other just wars, but always with a regard Proposition IV.

¹In the immediately preceding section.

for moderation and proportion, so as to go no further than necessity demands, preferring to abstain from what they lawfully might do rather than transgress due limits, and with an intent directed more to the welfare of the aborigines than to their own gain.

Note!

Careful attention must, however, be paid to what St. Paul says (I *Corinthians*, ch. 6): "All things are lawful unto me, but not all things are expedient." So everything said above must be taken as spoken absolutely. For it may be that these wars and massacres and spoliations will hinder rather than procure and further the conversion of the Indians. Accordingly, the prime consideration is that no obstacle be placed in the way of the Gospel, and if any such be so placed, this method of evangelization must be abandoned and another one sought for. What we have been showing is what is lawful in itself. I personally have no doubt that the Spaniards were bound to employ force and arms in order to continue their work there, but I fear measures were adopted in excess of what is allowed by human and divine law. The title under consideration might, then, be a second lawful title whereby the Indians might fall into the power of Spain. But regard must ever be had to what has just been said lest what in itself is lawful be made in the circumstances wrong, for goodness springs from the one complete¹ cause, but badness from individual defects, according to Aristotle 401 (*Ethics*, bk. 3) and Dionysius (*De divinis nominibus*, ch. 4).

Third lawful title.

13. Another title there may be, which is derived from the foregoing, namely: If any of the native converts to Christianity be subjected to force or fear by their princes in order to make them return to idolatry, this would justify the Spaniards, should other methods fail, in making war and in compelling the barbarians by force to stop such misconduct, and in employing the rights of war against such as continue obstinate, and consequently at times in deposing rulers as in other just wars. This can be reckoned a third just title, a title based not only on religion, but on human friendship and alliance, inasmuch as the native converts to Christianity have become friends and allies of Christians and we are under an obligation to do "good unto all men, especially unto such as are of the household of faith" (*Galatians*, ch. 6).

Proof.

Fourth lawful title.

14. Another possible title is the following: Suppose a large part of the Indians were converted to Christianity, and this whether it were done lawfully or unlawfully (as by means of threats or fear or other improper procedure), so long as they really were Christians, the Pope might for a reasonable cause, either with or without a request from them, give them a Christian sovereign and depose their other unbelieving rulers. The proof hereof is in the fact that, if this were expedient in order to preserve Christianity because of a fear that under unbelieving rulers converts would apostatize, that is, would lapse from the faith, or that their rulers would seize the opportunity to harass them, the Pope can change rulers in the interests 402

Proof.

¹The reference to Aristotle can not be traced with certainty; but the text follows Dionysius closely. He wrote, literally translated, "The good is from the one and complete (*μὴ καὶ ὅλην*) cause, but the bad from many and partial defects."—TRANSL.

of the faith. And confirmation is found in the fact that, as the doctors assert and as St. Thomas expressly says (*Secunda Secundae*, qu. 10. art. 10), the Church could free all Christian slaves who are in bondage to unbelievers even if that bondage was in other respects lawful. Innocent expressly declares this, in the above-mentioned *X*, 3, 34, 8. Therefore much more will he be able to free other Christians who have been reduced to bondage but not as stringently as slaves. Confirmation hereof is also to be found in the fact that a wife is as much bound to her husband as a bondsman is to his lord, and even more so, seeing that marriage is a tie of the divine law and bondage is not. But in the interests of the faith a believing wife is freed from an unbelieving husband, if he persecutes her for her religion, as appears from I *Corinthians*, ch. 7, and *X*, 4, 19, 7. Aye, the custom now is that by the very fact of one spouse being converted to the faith he or she is freed from the other who is an unbeliever. Therefore also the Church, in the interests of the faith and to avoid risks, may free all Christians from obedience and subjection to unbelieving lords, provided this be done without scandal. So we justify this fourth legal title.

Confirmation 1.

Confirmation 2.

403 15. Another possible title is founded either on the tyranny of those who bear rule among the aborigines of America or on the tyrannical laws which work wrong to innocent folk there, such as that which allows the sacrifice of innocent people or the killing in other ways of uncondemned people for cannibalistic purposes. I assert also that without the Pope's authority the Spaniards can stop all such nefarious usage and ritual among the aborigines, being entitled to rescue innocent people from an unjust death. This is proved by the fact that "God has laid a charge on every individual concerning his neighbor,"¹ and they all are our neighbors. Therefore, any one may defend them from such tyrannical and oppressive acts, and it is especially the business of princes to do so. A further proof is given by *Proverbs*, ch. 24: "Deliver them that are drawn unto death, and forbear not to free those that are being dragged to destruction." This passage is not to be taken as applying only when victims are actually being dragged to death, but the natives can also be compelled to abstain from such ritual. And if they refuse, it is a good ground for making war on them and proceeding against them under the law of war, and if such sacrilegious rites can not otherwise be stopped, for changing their rulers and creating a new sovereignty over them. In this connection we find the opinion of Innocent and the Archbishop to be sound, namely, that punishment can be inflicted for sins against nature. And it is immaterial that all the Indians assent to
404 rules and sacrifices of this kind and do not wish the Spaniards to champion them, for herein they are not of such legal independence as to be able to consign themselves or their children to death. So we may find a fifth lawful title here.

Fifth lawful title.

Proof 1.

Proof 2.

16. Another possible title is by true and voluntary choice, as if the Indians, aware alike of the prudent administration and the humanity of the Spaniards, were of their own motion, both rulers and ruled, to accept the

Sixth lawful title.

¹*Ecclesiasticus*, ch. 17, v. 12.

Proof.

King of Spain as their sovereign. This could be done and would be a lawful title, by the law natural too, seeing that a State can appoint any one it will to be its lord, and herefor the consent of all is not necessary, but the consent of the majority suffices. For, as I have argued elsewhere, in matters touching the good of the State the decisions of the majority bind even when the rest are of a contrary mind; otherwise naught could be done for the welfare of the State, it being difficult to get all of the same way of thinking. Accordingly, if the majority of any city or province were Christians and they, in the interests of the faith and for the common weal, would have a prince who was a Christian, I think that they could elect him even against the wishes of the others and even if it meant the repudiation of other unbelieving rulers, and I assert that they could choose a prince not only for themselves, but for the whole State, just as the Franks for the good of their State changed their 405 sovereigns and, deposing Childeric, put Pepin, the father of Charlemagne, in his place, a change which was approved by Pope Zacharias. This, then, can be put forward as a sixth title.

Seventh lawful title.

17. Another title may be found in the cause of allies and friends. For as the Indians themselves sometimes wage lawful wars with one another and the side which has suffered a wrong has the right to make war, they might summon the Spaniards to help and share the rewards of victory with them. This is what the Tlaxcaltecs are said to have done against the Mexicans, the former arranging with the Spaniards to help them to overcome the latter and to receive whatever could fall to them under the law of war.

Proof.

For there is no doubt, as Cajetan also asserts (*Secunda Secundae*, qu. 40, art. 1), that the cause of allies and friends is a just cause of war, a State being quite properly able, as against foreign wrongdoers, to summon

Confirmation.

foreigners to punish its enemies. And this is confirmed by the fact that this was a method very much in vogue among the Romans for the extension of their Empire; that is, they brought aid to their allies and friends and so making a just war came, by right of war, into possession of fresh provinces. Yet the Roman Empire is approved by St. Augustine (*De civitate Dei*, 406 bk. 5) and by St. Thomas (*Opusculum* 21) as a lawful one. And Sylvester reckoned Constantine the Great as Emperor, as St. Ambrose did Theodosius. Now, there does not seem any other juridic title whereby the Romans came into possession of the world, save in right of war, and the most especial cause of their wars was the defense and protection of their friends. In just the same way Abraham championed the cause of the King of Salem and of other kings who had struck a treaty with him, and he fought against four kings of that region, though they had done him personally no wrong (*Genesis*, ch. 14). This is the seventh and the last title whereby the Indians and their lands could have come or might come into the possession and lordship of Spain.

Eighth title is doubtful.

18. There is another title which can indeed not be asserted, but brought up for discussion, and some think it a lawful one. I dare not affirm it at all, nor do I entirely condemn it. It is this: Although the aborigines in question are (as has been said above) not wholly unintelligent, yet they are

little short of that condition, and so are unfit to found or administer a lawful State up to the standard required by human and civil claims. Accordingly they have no proper laws nor magistrates, and are not even capable
 407 of controlling their family affairs; they are without any literature or arts, not only the liberal arts, but the mechanical arts also; they have no careful agriculture and no artisans; and they lack many other conveniences, yea necessities, of human life. It might, therefore, be maintained that in their own interests the sovereigns of Spain might undertake the administration of their country, providing them with prefects and governors for their towns, and might even give them new lords, so long as this was clearly for their benefit. I say there would be some force in this contention; for if they were all wanting in intelligence, there is no doubt that this would not only be a permissible, but also a highly proper, course to take; nay, our sovereigns would be bound to take it, just as if the natives were infants. The same principle seems to apply here to them as to people of defective intelligence; and indeed they are no whit or little better than such so far as self-government is concerned, or even than the wild beasts, for their food is not more pleasant and hardly better than that of beasts. Therefore their governance should in the same way be entrusted to people of intelligence. There is clear confirmation hereof, for if by some accident of fortune all their adults were to perish and there were to be left boys and youths in enjoyment, indeed, of a certain amount of reason, but of tender years and under the age of puberty, our sovereigns would certainly be justified in taking
 408 charge of them and governing them so long as they were in that condition. Now, this being admitted, it appears undeniable that the same could be done in the case of their barbarian parents, if they be supposed to be of that dullness of mind which is attributed to them by those who have been among them and which is reported to be more marked among them than even among the boys and youths of other nations. And surely this might be founded on the precept of charity, they being our neighbors and we being bound to look after their welfare. Let this, however, as I have already said, be put forward without dogmatism and subject also to the limitation that any such interposition be for the welfare and in the interests of the Indians and not merely for the profit of the Spaniards. For this is the respect in which all the danger to soul and salvation lies. And herein some help might be gotten from the consideration, referred to above, that some are by nature slaves, for all the barbarians in question are of that type and so they may in part be governed as slaves are.

Probable principle.

Confirmation.

Now, it seems to follow from all this discussion that, if there be no force in any of the titles which have been put forward, so that the native Indians neither gave cause for just war nor wished for Spanish rulers, etc., all the travel to, and trade with, those parts should be stopped, to the great loss of the Spaniards and also to the grave hurt of the royal treasury (a thing intolerable). My first answer to this is: There would be no obligation to stop trade, for, as already said, there are many commodities of which
 409 the natives have a superfluity and which the Spaniards could acquire by

Objection.

First answer.

barter. Also there are many commodities which the natives treat as ownerless or as common to all who like to take them, and the Portuguese, to their own great profit, have a big trade with similar people without reducing them to subjection. Secondly, there would probably be no diminution in the amount of the royalties, for a tax might quite fairly be placed on the gold and silver which would be brought away from the Indians, as much as a fifth or even more, according to quality, and it would be well-earned, inasmuch as the maritime discovery was made by our sovereign and it is under his authority that trade is carried on in safety. Thirdly, it is evident, now that there are already so many native converts, that it would be neither expedient nor lawful for our sovereign to wash his hands entirely of the administration of the lands in question.

Second
ANSWER.

Third
ANSWER.

THE SECOND RELECTIO

OF THE REVEREND FATHER, BROTHER FRANCISCUS DE VICTORIA, ON THE INDIANS, OR ON THE LAW OF WAR MADE BY THE SPANIARDS ON THE BARBARIANS.

SUMMARY.

1. Christians may serve in war and make war.
2. In whose hands lies the authority to make or declare war?
3. Anyone, even a private person, can accept and wage a defensive war.
4. Whether one who is attacked by a robber or a foe may strike back the assailant, if able to escape by flight.
5. Every commonwealth has authority to declare and make war.
6. A prince has the same authority to declare and make war as a State has.
7. What a State is and who is properly styled a prince.
8. Whether several States or princes, when they have one common lord or prince, may make war of themselves without the authority of the superior lord.
- 411 9. Petty rulers or princes, who are not at the head of a complete State, but are parts of another State, can not undertake or make war. And what about cities?
10. What can be a reason or cause of just war? Proof that diversity of religion is not a cause of just war.
11. Extension of an Empire is not a just cause of war.
12. The personal glory, or other advantage, of a prince is not a just cause of war.
13. Wrong done is the sole and only just cause for making war.
14. Not every kind and degree of wrong suffices for making war.
15. When just war exists, everything is lawful which is necessary for the defense of the public good.
16. In just war it is lawful to retake all things that have been lost, or a part thereof.
17. In just war it is lawful to make good, out of the goods of the enemy, all the cost of the war and all damages wrongfully caused by the enemy.
18. After property has been recaptured from an enemy in just war, what the prince may then do.
19. It is lawful for a prince, after gaining the victory in a just war and after retaking property, and even after the establishment of peace and security, to avenge the wrongs done to him by the enemy and to take measures against the enemy and punish them for these wrongs.
- 412 20. In order that a war be called just, it is not always enough that the prince believes he has a just cause.
21. The justice of a war must be most thoroughly and carefully examined.
22. Whether subjects are bound to examine the cause of a war; and how, if a subject is convinced of the injustice of a war, he may not serve in it, even though his sovereign commands.
23. If subjects are conscientiously of opinion that a war is unjust, they may not serve in it, whether their opinion be wrong or right.
24. Senators, petty rulers, and, in general, all who, either on summons or coming of their own accord, are admitted to the public council or the king's council, are bound to examine the cause of an unjust war.

25. Who are not bound to examine the causes of war, but may lawfully serve in it in reliance on the good faith of their betters.
26. When ignorance of the injustice of a war would not excuse subjects who serve in it.
27. What is to be done, when there is doubt about the justice of a war; and how if one prince be in lawful possession, so long as the doubt remains another 413 may not try to turn him out by war and armed force.
28. If there be a city or province concerning which it is doubtful whether it has a lawful possessor, especially where there is a vacancy owing to the death of the lawful lord, etc.—what is to be done in such a case.
29. How a person who is doubtful about his own title, even if he be in peaceable possession, is bound to make careful examination of his case, if perchance he can arrive at certainty either in his own favor or in favor of another.
30. After the examination of a case, so long as a doubt reasonably persists, a lawful possessor is not bound to quit possession, but may lawfully retain it.
31. In a doubtful case, subjects may follow their prince to battle not only in a defensive, but also in an offensive war.
32. Whether a war can be just on both sides, and how, apart from ignorance, this can not happen.
33. Whether a prince or a subject, who in ignorance has prosecuted an unjust war, is bound to make restitution, if afterwards he becomes convinced of its injustice.
34. Whether it is lawful in war to kill the innocent.
35. Slaughter of the innocent is never lawful in itself and intentionally.
36. Whether it is lawful to kill women and children in a war against the Turks; 414 and what, among Christians, about farmers, civilians, foreigners, strangers, and clergy.
37. The incidental killing of the innocent, even with knowledge, is sometimes lawful, sometimes not.
38. Whether it is lawful to kill the innocent from whom danger in the future is apprehended.
39. Whether it is lawful to despoil the innocent among the enemy, and what things may be taken.
40. If war can be adequately conducted without despoiling farmers or other innocent folk, it seems unlawful to despoil them; and what about foreigners and strangers on enemy territory?
41. How, if the enemy refuse to restore the things which they have wrongfully taken away, and the injured party can not recoup himself in any other way, he can seek satisfaction where he will, whether from the guilty or the innocent.
42. Whether the innocent and children, who are admittedly not to be killed, may at least be led into captivity and slavery.
43. Whether hostages, taken from the enemy in time of truce or on the termination of a war, may be put to death, if the enemy break faith and do not abide by what has been agreed on.
44. Whether it is lawful in war to kill all the guilty. 415
45. It is lawful to kill without distinction all who resist in the actual heat of battle either in the storming or in the defense of a city, and as long as affairs are in peril.
46. It is lawful to kill the guilty, even after victory has been won and danger has already been removed.
47. It is not always lawful to kill all the guilty, merely in order to avenge a wrong.
48. At times it is both lawful and expedient to kill all the guilty, especially in a war against unbelievers. And what in a war against Christians?
49. Whether it is lawful to kill captives and those who have surrendered, assuming them to have been guilty also.

50. Whether things captured in a just war belong to the captor and seizor; and how these things vest in the seizor up to a sufficient satisfaction for what has been wrongfully taken away and for expenses.
51. How all movables, by the law of nations, vest in the seizor, even though their value more than compensates the wrong done.
- 416 52. Whether it is lawful to leave a city to the soldiery by way of booty; and how this is not unlawful, but at times even necessary.
53. Soldiers may not loot or burn without authority; otherwise they are bound to make restitution.
54. It is lawful to seize and hold the lands and fortresses and towns of the enemy, so far as this is necessary by way of compensation for damages done.
55. It is lawful to seize and hold an enemy fortress or city by way of obtaining security and avoiding danger or as a means of defense and in order to take away from the enemy an opportunity to do harm, etc.
56. It is lawful to deprive the enemy of part of his territory on account of the wrong he has done and by way of punishment, that is, revenge; and how on this ground a fortress or town may be seized, so long as due limits are observed.
57. Whether it is lawful to impose the payment of tribute on the conquered enemy.
58. Whether it is lawful to depose the princes of the enemy and put new ones over them or retain the sovereignty for oneself; and how it is not lawful to do this indiscriminately and for every cause of just war whatsoever.
59. When the princes of the enemy may lawfully be deposed, is shown.
60. The canons or rules of belligerency are described.

417 Inasmuch as the seizure and occupation of those lands of the barbarians whom we style Indians can best, it seems, be defended under the law of war, I propose to supplement the foregoing discussion of the titles, some just and some unjust, which the Spaniards may allege for their hold on the lands in question, by a short discussion of the law of war, so as to give more completeness to that *relectio*. As, however, the other claims on my time will not allow me to deal with all the points which arise out of this topic, the scope which I can give my pen must be proportionate, not to the amplitude and dignity of the theme, but to the shortness of the time at my disposal. And so I will merely note the main propositions of this topic, together with very brief proofs, and will abstain from touching on the many doubtful matters which might otherwise be brought into this discussion. I will deal with four principal questions. First, Whether Christians may make war at all; secondly, Where does the authority to declare or wage war repose; thirdly, What may and ought to furnish causes of just war; fourthly, What and how extensive measures may be taken in a just war against the enemy?

Four principal questions to be discussed.

418 As regards the first question, war might seem altogether prohibited to Christians, for there is the prohibition of self-defense in the passage (*Romans*, ch. 12), "Dearly beloved, avenge not yourselves, but give place unto wrath," and our Lord says in the Gospel (*St. Matthew*, ch. 5), "Whosoever shall smite thee on the right cheek, turn to him the other also" and "I say unto you not to resist evil," and (*St. Matthew*, ch. 26), "All they that take the sword shall perish by the sword." And it is no sufficient answer to say that all these matters are not of precept, but of counsel, for it would be a grave enough impropriety if every war undertaken by Christians was contrary to

The first principal question. The argument on one side of the question.

our Lord's advice. The opinion of all the doctors is to the contrary and so is the received usage of the Church.

Luther's
opinion.

In development of this question be it noted that, although Catholics are fairly in accord on the matter, yet Luther, who left naught uncontaminated, denies that Christians may take up arms even against the Turks, and he relies not only on the above-cited texts of Scripture, but also on the fact that if the Turks attack Christendom it is the will of God, which may not be resisted. Herein, however, he had not as much success as in his other dogmas in imposing on the Germans, who are born soldiers. Tertullian too, seems not averse from this opinion, for in his *De corona militis* he discusses "whether military service is at all right for a Christian," and in the issue he inclines to hold that military service is forbidden to a Christian, who, says he, "may not even go to law."

Tertullian,
too, inclines
to same
opinion.

The author
gives his
opinion in a
single propo-
sition.
(a) Especially
book 22.
(b) Quest. 31.
(c) Serm. 19.
Proof 1.
(d) It is in the
Sermones
De verbis
Domini.
(e) Letter 205
to Count
Boniface.
(f) Passage
seems to be
in bk. 22
Contra Faus-
tum, ch. 74.
Proof 2.

1. Passing over outside opinions, however, let my answer to the question be given in the single proposition: Christians may serve in war and make war. This is the conclusion of St. Augustine in the many passages where he thoroughly considers the question, such as: (a) in his *Contra Faustum*, (b) in his *Liber 83 Quaestionum*, (c) in his *De verbis Domini*, in his *Contra Secundinum Manichaeum*, (d) in his sermon on the Centurion's son, and (e) in his Letter to Boniface. And, as St. Augustine shows, this is proved by the words of John the Baptist to the soldiers (*St. Luke*, ch. 3), "Do violence to no man, neither accuse any falsely." "But," says St. Augustine, (f) "if Christian doctrine condemned war altogether, those looking for counsels of salvation in the Gospel would be told to throw away their arms and give up soldiering altogether; but what is said to them is, 'Do violence to no man and be content with your wages.'"

Secondly, there is proof in the reason of the thing (*Secunda Secundae*, qu. 40, art. 1). To draw the sword and use arms against internal wrongdoers and seditious citizens is lawful according to *Romans*, ch. 13, "He beareth not the sword in vain, for he is the minister of God, a revenger of wrath upon him that doeth evil." Therefore it is lawful also to use the sword and arms against external enemies. Princes, accordingly, are told in the *Psalms*,¹ "Deliver the poor and needy, rid them out of the hand of the wicked."

Proof 3.

Thirdly, this was also allowable by the law of nature, as appears from the case of Abraham, who fought against four kings (*Genesis*, ch. 14), and also by the written law, as appears from the cases of David and the Maccabees. But the Gospel law forbids nothing which is allowed by natural law, as is well shown by St. Thomas (*Prima Secundae*, qu. 107, last art.), and that is why it is called the law of liberty (*St. James*, ch. 1 and 2). Therefore, what was lawful under natural law and in the written law is no less lawful under the Gospel law.

Proof 4 and
onward deals
with offensive
war.

Fourthly, since there can be no doubt that in a defensive war force may be employed to repel force (*Dig.*, 1, 1, 3), this is also proved with regard to an offensive war, that is, a war where we are not only defending ourselves

¹*Ps.* 81, in Vulgate. In A. V. *Ps.* 82.

or seeking to repossess ourselves of property, but also where we are trying to avenge ourselves for some wrong done to us. This, I say, is proved by the authority of St. Augustine (*Liber 83 Quæstionum*) in a passage also found in can. *dominus*, C. 23, qu. 2, "Those wars are described as just wars which are waged in order to avenge a wrong done, as where punishment has to be meted out to a city or state because it has itself neglected to exact punishment for an offense committed by its citizens or subjects or to return what has been wrongfully taken away."

This is an extract from *Quæstiones super Josue*, qu. 10.

A fifth proof with regard to an offensive war is that even a defensive war could not be waged satisfactorily, were no vengeance taken on enemies who have done or tried to do a wrong. For they would only be embold-
421 ened to make a second attack, if the fear of retribution did not keep them from wrongdoing.

Proof 5.

A sixth proof is that, as St. Augustine says (*De verbo Domini* and *Ad Bonifacium*), the end and aim of war is the peace and security of the State. But there can be no security in the State unless enemies are made to desist from wrong by the fear of war, for the situation with regard to war would be glaringly unfair, if all that a State could do when enemies attack it unjustly was to ward off the attack and if they could not follow this up by further steps.

Proof 6. Passages already cited.

A seventh proof comes from the end and aim and good of the whole world. For there would be no condition of happiness for the world, nay, its condition would be one of utter misery, if oppressors and robbers and plunderers could with impunity commit their crimes and oppress the good and innocent, and these latter could not in turn retaliate on them.

Proof 7.

My eighth and last proof is one which in morals carries the utmost weight, namely, the authority and example of good and holy men. Such men have not only defended their country and their own property in defensive wars, but have also in offensive wars sought reparation for wrongs done or attempted by their enemies, as appears from the case of Jonathan and Simon (*I Maccabees*, ch. 9), who avenged the death of their brother John on the sons of Jambri. And in the Christian Church we have the conspicuous examples of Constantine the Great and Theodosius the
422 Elder and other renowned and most Christian Emperors, who made many wars of both kinds, although their councils included bishops of great sanctity and learning.

Proof 8.

2. Second question: In whose hands lies the authority to declare and to make war?

Second principal question. Proposition I.

3. Herein let my first proposition be: Any one, even a private person, can accept and wage a defensive war. This is shown by the fact that force may be repelled by force (*Dig.*, as above). Hence any one can make this kind of war, without authority from any one else, for the defense not only of his person, but also of his property and goods.

4. A doubt, however, arises in connection with this proposition, namely, whether one who is attacked by a robber or enemy can strike his assailant back if escape by flight is possible. The Archbishop, indeed, says, No; this being in excess of the limits of blameless self-defense, since everyone

Doubt.

The Archbishop's opinion.

Panormi-
tanus'
opinion.

Bartolus'
opinion.

The author
adopts
Bartolus'
opinion.

Proposi-
tion II.

Distinction
between a
private
person and
a State.

The author's
opinion.

Proposi-
tion III.

is bound in the exercise of self-defense to do as little harm as possible to his assailant. If, then, resistance would involve the death of or grievous bodily harm to the assailant, but escape by flight is a possible thing, the latter course ought to be adopted. Panormitanus, however, writing on *X*, 2, 13, 12, draws a distinction. If, says he, the victim would be seriously disgraced by flight, he is not bound to fly, but may repel the wrong by striking back, whereas if flight would not smirch his reputation or honor, as when a monk or rustic is attacked by a noble and powerful man, he is bound to fly instead. Bartolus, however, commenting on *Dig.*, 48, 19, 1, and 48, 8, 9, holds without distinguishing that self-defense is lawful and that there is no obligation to fly, the putting to flight being itself a wrong (*Dig.*, 47, 10, 15). If, then, armed resistance is permissible in defense of property, as appears from *X*, 2, 13, 12, and from c. 6, tit. 11, bk. 5 in VI, much more is it permissible in order to protect the body from hurt, such hurt being more serious than wrong to property (*Dig.*, 48, 19, 10). This opinion can be safely held and with possibility of demonstration, especially as the civil law admits as much, as in *Dig.*, 48, 8, 9. Now, no one sins who acts under warrant of the law, inasmuch as the law affords justification in the forum of conscience. Accordingly, even if natural law does not allow killing in defense of property, this is rendered lawful by the civil law and is available, so long as no scandal is caused, not only to laymen, but to clerics and professed persons.

5. Second proposition: Every State has authority to declare and to make war. In course of proof of this be it noted that the difference herein between a private person and a State is that a private person is entitled, as said above, to defend himself and what belongs to him, but has no right to avenge a wrong done to him, nay, not even to recapt property that has been seized from him if time has been allowed to go by since the seizure. But defense can only be resorted to at the very moment of the danger, or, as the jurists say, *in continenti*, and so when the necessity of defense has passed there is an end to the lawfulness of war. In my view, however, one who has been contumeliously assaulted can immediately strike back, even if the assaulter was not proposing to make a further attack, for in the avoidance of shame and disgrace one who (for example) has had his ears boxed might immediately use his sword, not for the purpose of vengeance, but, as has been said, in order to avoid infamy and disgrace. But a State is within its rights not only in defending itself, but also in avenging itself and its subjects and in redressing wrongs. This is proved by what Aristotle says in the third book of his *Politics*, namely, that a State ought to be sufficient unto itself. But it can not adequately protect the public weal and the position of the State if it can not avenge a wrong and take measures against its enemies, for wrongdoers would become readier and bolder for wrongdoing, if they could do wrong with impunity. It is, therefore, imperative for the due ordering of human affairs that this authority be allowed to States.

6. Third proposition: A prince has the same authority in this respect as the State has. This is the opinion of St. Augustine (*Contra Faustum*):

"The natural order, best adapted to secure the peace of mankind, requires that the authority to make war and the advisability of it should be in the hands of the sovereign prince." Reason supports this, for the prince only holds his position by the election of the State. Therefore he is its representative and wields its authority; aye, and where there are already lawful princes in a State, all authority is in their hands and without them nothing of a public nature can be done either in war or in peace.

Herein the prince has the same authority as the State.

7. Now, the whole difficulty is in the questions: What is a State, and who can properly be called a sovereign prince? I will briefly reply to them by saying that a State is properly called a perfect community. But the essence of the difficulty is in saying what a perfect community is. By way of solution be it noted that a thing is called perfect when it is a completed whole, for that is imperfect in which there is something wanting, and, on the other hand, that is perfect from which nothing is wanting. A perfect State or community, therefore, is one which is complete in itself, that is, which is not a part of another community, but has its own laws and its own council and its own magistrates, such as is the Kingdom of Castile and Aragon and the Republic of Venice and other the like. For there is
426 no obstacle to many principalities and perfect States being under one prince. Such a State, then, or the prince thereof, has authority to declare war, and no one else.

8. Here, however, a doubt may well arise whether, when a number of States of this kind or a number of princes have one common lord or prince, they can make war of themselves and without the authorization of their superior lord. My answer is that they can do so undoubtedly, just as the kings who are subordinate to the Emperor can make war on one another without waiting for the Emperor's authorization, for (as has been said) a State ought to be self-sufficient, and this it would not be, if it had not the faculty in question.

Doubt.

The author's answer.

9. Hence it follows and is plain that other petty rulers and princes, who are not at the head of a perfect State, but are parts of another State, can not begin to carry on a war. Such is the Duke of Alva or the Count of Benevento, for they are parts of the Kingdom of Castile and consequently have not perfect States. As, however, these matters are for a great part governed by the law of nations or by human law, Custom can give power and authority to make war. And so if any State or prince has obtained by ancient custom the right to make war of itself or himself, this authority can not be gain-
427 said, even if in other respects the State be not a perfect one. So, also, necessity can confer this license and authority. For if within one and the same realm one city should take up arms against another, or one of the dukes against another duke, and the king should neglect or should lack courage to exact redress for the wrongs that have been done, the aggrieved city or duke may not only resort to self-defense, but may also commence war and take measures against the enemy and even kill the wrongdoers, there being no other adequate means of self-defense. For the enemy would not cease from outrage, if the victims thereof were content merely with self-

Corollary.

defense. On this principle a private person also may begin an attack on his foe, if there is no other way of safeguarding himself from wrong. This is enough on the present question.

Third
principal
question.
Proposi-
tion I.

10. Third question: What may be a reason and cause of just war? It is particularly necessary to ask this in connection with the case of the Indian aborigines, which is now before us. Here my first proposition is: Difference of religion is not a cause of just war. This was shown at length in the preceding Relectio, when we demolished the fourth alleged title for taking possession of the Indians, namely, their refusal to accept Christianity. And it is the opinion of St. Thomas (*Secunda Secundae*, qu. 66, art. 8), and the common opinion of the doctors—indeed, I know of no one of the opposite way of thinking.

Proposi-
tion II.

11. Second proposition: Extension of empire is not a just cause of war. 428 This is too well known to need proof, for otherwise each of the two belligerents might have an equally just cause and so both would be innocent. This in its turn would involve the consequence that it would not be lawful to kill them and so imply a contradiction, because it would be a just war.

Proposi-
tion III.

12. Third proposition: Neither the personal glory of the prince nor any other advantage to him is a just cause of war. This, too, is notorious. For a prince ought to subordinate both peace and war to the common weal of his State and not spend public revenues in quest of his own glory or gain, much less expose his subjects to danger on that account. Herein, indeed, is the difference between a lawful king and a tyrant, that the latter directs his government towards his individual profit and advantage, but a king to the public welfare, as Aristotle says (*Politics*, bk. 4, ch. 10). Also, the prince derives his authority from the State. Therefore he ought to use it for the good of the State. Also, laws ought "not to be enacted for the private good of any individual, but in the common interest of all the citizens," as is ruled in can. 2, Dist. 4, a citation from Isadore. Therefore the rules relating to war ought to be for the common good of all and not for the private good of the prince. Again, this is the difference between freemen and slaves, as Aristotle says (*Politics*, bk. 1, ch. 3 and 4) that masters exploit slaves for 429 their own good and not for the good of the slaves, while freemen do not exist in the interest of others, but in their own interest. And so, were a prince to misuse his subjects by compelling them to go soldiering and to contribute money for his campaigns, not for the public good, but for his own private gain, this would be to make slaves of them.

Proof 1.

Proof 2.

Proof 3.

Proposi-
tion IV.

*Rather in
Quaestiones
super Josue,
qu. 10.
Proof 1.
Proof 2.

13. Fourth proposition: There is a single and only just cause for commencing a war, namely, a wrong received. The proof of this rests in the first place on the authority of St. Augustine (*Liber 83 Quaestionum*,* "Those wars are described as just wars," etc., as above), and it is the conclusion arrived at by St. Thomas (*Secunda Secundae*, qu. 40, art. 1) and the opinion of all the doctors. Also, an offensive war is for the purpose of avenging a wrong and of taking measures against an enemy, as said above. But there can be no vengeance where there is no preceding fault and wrong. Therefore. Also, a prince has no greater authority over foreigners than

Proof 3.

over his own subjects. But he may not draw his sword against his own subjects, unless they have done some wrong. Therefore not against foreigners either. This is confirmed by the text already cited from St. Paul (*Romans*, ch. 13) about a prince: "He beareth not the sword in vain: for he is the minister of God, a revenger to execute wrath upon him that doeth evil." Hence it is clear that we may not turn our sword against those who do us no harm, the killing of the innocent being forbidden by natural law. I omit here any injunctions inconsistent herewith which God has given in special cases, for He is the Lord of life and death and it is within His competence to vary His dispositions.

14. Fifth proposition: Not every kind and degree of wrong can suffice for commencing a war. The proof of this is that not even upon one's own fellow-countrymen is it lawful for every offense to exact atrocious punishments, such as death or banishment or confiscation of property. As, then, the evils inflicted in war are all of a severe and atrocious character, such as slaughter and fire and devastation, it is not lawful for slight wrongs to pursue the authors of the wrongs with war, seeing that the degree of the punishment ought to correspond to the measure of the offence (*Deuteronomy*, ch. 25).

Proposition V.

15. The fourth question is about the law of war, namely, what kind and degree of stress is lawful in a just war. Here let my first proposition be: In war everything is lawful which the defense of the common weal requires. This is notorious, for the end and aim of war is the defense and preservation of the State. Also, a private person may do this in self-defense, as has been proved. Therefore much more may a State and a prince.

Fourth principal question. Proposition I.

16. Second proposition: It is permissible to recapt everything that has been lost and any part of the same. This is too notorious to need proof. For war is begun or undertaken with this object.

Proposition II.

17. Third proposition: It is lawful to make good out of enemy property the expenses of the war and all damages wrongfully caused by the enemy. This is clear, for the enemy who has done the wrong is bound to give all this redress. Therefore the prince can claim it all and exact it all by war. Also, as before, there is the argument that, when no other way lies open, a private creditor can seize the amount of his debt from the debtor. Also, if there were any competent judge over the two belligerents, he would have to condemn the unjust aggressors and authors of wrong, not only to make restitution of what they have carried off, but also to make good the expenses of the war to the other side, and also all damages. But a prince who is carrying on a just war is as it were his own judge in matters touching the war, as we shall forthwith show. Therefore he can enforce all these claims upon his enemy.

Proposition III.

Proof 1.

Proof 2.

Proof 3.

18. Fourth proposition: Not only are the things just named allowable, but a prince may go even further in a just war and do whatever is necessary in order to obtain peace and security from the enemy; for example, destroy an enemy's fortress and even build one on enemy soil, if this be necessary in order to avert a dangerous attack of the enemy. This

Proposition IV.

Proof 1.

Proof 2.

is proved by the fact that, as said above, the end and aim of war is peace and security. Therefore a belligerent may do everything requisite to obtain peace and security. Further, tranquillity and peace are reckoned 432 among the desirable things of mankind and so the utmost material prosperity does not produce a state of happiness if there be no security there.

Proof 3.

Therefore it is lawful to employ all appropriate measures against enemies who are plundering and disturbing the tranquillity of the State. Also, all measures of this kind may be taken against internal foes, that is, against bad citizens. Therefore they are lawful against external foes. The antecedent is clear, for if one citizen does a wrong to a fellow citizen, the magistrate not only compels the wrongdoer to make amends to the injured party, but, if the former is a source of fear to the latter, he is compelled to give bond or quit the city, so as to remove the danger of which he is the cause. This shows that even when victory has been won and redress obtained, the enemy may be made to give hostages, ships, arms, and other things, when this is genuinely necessary for keeping the enemy in his duty and preventing him from becoming dangerous again.

Corollary.

Proposition V.

Power which, in the author's opinion, princes have not only over their own subjects, but also over foreigners by the law of nations, and by natural law too.

19. Fifth proposition: Not only is all this permissible, but even after victory has been won and redress obtained and peace and safety been secured, it is lawful to avenge the wrong received from the enemy and to take measures against him and exact punishment from him for the wrongs he has done. In proof of this be it observed that princes have authority not only over their own subjects, but also over foreigners, so far as to prevent them from committing wrongs, and this is by the law of nations and by the authority 433 of the whole world. Nay, it seems to be by natural law also, seeing that otherwise society could not hold together unless there was somewhere a power and authority to deter wrongdoers and prevent them from injuring the good and innocent. Now, everything needed for the government and preservation of society exists by natural law, and in no other way can we show that a State has by natural law authority to inflict pains and penalties on its citizens who are dangerous to it. But if a State can do this to its own citizens, society at large no doubt can do it to all wicked and dangerous folk, and this can only be through the instrumentality of princes. It is, therefore, certain that princes can punish enemies who have done a wrong to their State and that after a war has been duly and justly undertaken the enemy are just as much within the jurisdiction of the prince who undertakes it as if he were their proper judge. Confirmation hereof is furnished by the fact that in reality peace and tranquillity, which are the end and aim of war, can not be had unless evils and damages be visited on the enemy in order to deter them from the like conduct in the future. All this is also proved and confirmed by the authority and examples of good men. For, as said above, the Maccabees made war not only to recover the things which they had lost, but also to avenge their wrongs. And some most Christian princes and most religious Emperors have done the same 434 thing. Moreover, shame and disgrace are not wiped away from a State merely by its rout of its enemies, but also by its visiting severe punishment

and castigation on them. Now, among the things which a prince is bound to defend and preserve for his State are its honor and authority.

20. Many doubts are suggested by what has just been said. In the first place, there is a doubtful point in connection with the justice of a war, whether it be enough for a just war that the prince believes himself to have a just cause. On this point let my first proposition be: This belief is not always enough. And for proof I rely, first, on the fact that in some matters of less moment it is not enough either for a prince or for private persons to believe that they are acting justly. This is notorious, for their error may be vincible and deliberate, and the opinion of the individual is not enough to render an act good, but it must come up to the standard of a wise man's judgment, as appears from *Ethics*, bk. 2. Also the result would otherwise be that very many wars would be just on both sides, for although it is not a common occurrence for princes to wage war in bad faith, they nearly always think theirs is a just cause. In this way all belligerents would be innocent and it would not be lawful to kill them. Also, were it otherwise, even Turks and Saracens might wage just wars against Christians, for they think they are thus rendering God service.

Doubt I suggested by what has been said.

Proposition I.

21. Second proposition: It is essential for a just war that an exceedingly careful examination be made of the justice and causes of the war and that the reasons of those who on grounds of equity oppose it be listened to. For (as the comic poet says) "A wise man must make trial of everything by words before resorting to force," and he ought to consult the good and wise and those who speak with freedom and without anger or bitterness or greed, seeing that (as Sallust says) "where these vices hold sway, truth is not easily distinguished." This is self-evident. For truth and justice in moral questions are hard of attainment and so any careless treatment of them easily leads to error, an error which will be inexcusable, especially in a concern of great moment, involving danger and calamity to many, and they our neighbors, too, whom we are bound to love as ourselves.

Proposition II.

Terence.

Sallust.

22. Second doubt: Whether subjects are bound to examine the cause of a war or whether they may serve in the war without any careful scrutiny thereof, just as the lictors had to enforce the praetor's decree without questioning. On this doubt let my first proposition be: If a subject is convinced of the injustice of a war, he ought not to serve in it, even on the command of his prince. This is clear, for no one can authorize the killing of an innocent person. But in the case before us the enemy are innocent. Therefore they may not be killed. Again, a prince sins when he commences a war in such a case. But "not only are they who commit such things worthy of death, but they, too, who consent to the doing thereof" (*Romans*, ch. 1). Therefore soldiers also are not excused when they fight in bad faith. Again, it is not lawful to kill innocent citizens at the prince's command. Therefore not aliens either.

Doubt II.

Proposition I.

23. Hence flows the corollary that subjects whose conscience is against the justice of a war may not engage in it whether they be right or wrong. This is clear, for "whatever is not of faith is sin" (*Romans*, ch. 14).

Corollary.

Proposi-
tion II.

24. Second proposition: Senators and petty rulers and in general all who are admitted on summons or voluntarily to the public council or the prince's council ought, and are bound, to examine into the cause of an unjust war. This is clear; for whoever can save his neighbor from danger and harm is bound to do so, especially when the danger is that of death and greater ills, as is the case in war. But the persons referred to can avert the war, supposing it to be unjust, if they lend their wisdom and weight to an examination into its causes. Therefore they are bound so to do. Again, if by their neglect an unjust war be entered on, they are consenting parties thereto, for that which a man could and ought to prevent is imputed to him, if he does not prevent it. Again, a king is not by 437 himself capable of examining into the causes of a war and the possibility of a mistake on his part is not unlikely and such a mistake would bring great evil and ruin to multitudes. Therefore war ought not to be made on the sole judgment of the king, nor, indeed, on the judgment of a few, but on that of many, and they wise and upright men.

Proposi-
tion III.

25. Third proposition: Other lesser folk who have no place or audience in the prince's council or in the public council are under no obligation to examine the causes of a war, but may serve in it in reliance on their betters. This is proved, first, by the fact that it is impossible and inexpedient to give reasons for all acts of state to every member of the commonalty. Also by the fact that men of the lower orders, even if they perceived the injustice of a war, could not stop it, and their voice would not be heeded. Therefore, any examination by them of the causes of a war would be futile. Also by the fact that for men of this sort it is enough proof of the justice of war (unless the contrary be quite certain) that it is being waged after public counsel and by public authority. Therefore no further examination on their part is needed.

Proposi-
tion IV.

26. Fourth proposition: Nevertheless the proofs and tokens of the injustice of the war may be such that ignorance would be no excuse even to subjects of this sort who serve in it. This is clear, because such ignorance might be deliberate and adopted with evil intent towards the enemy. 438 Also, were this otherwise, unbelievers would be excused when they follow their chieftains to war against Christians and it would be unlawful to kill them, it being certain that they deem themselves to have a just cause of war. Also, the soldiers who crucified Christ, ignorantly following Pilate's order, would be excused. Also, the Jewish mob would be excused which was led by the elders to shout "Away with Him, crucify Him."

Doubt III.

Proposi-
tion I.

27. Third doubt: What should be done when the justice of the war is doubtful, that is, when there are apparent and probable reasons on both sides. First proposition: As regards the princes themselves, it seems that if one be in lawful possession, the other may not try to turn him out by war and armed force, so long as the doubt remains. For example: Suppose the King of France to be in lawful possession of Burgundy and that it be doubtful whether he has or has not right thereto. The Emperor may not try to oust him by arms; nor on the other hand may the French King

seize Naples or Milan, if there be doubt who is entitled to it. The proof is that in doubtful matters the party in possession has the better position. Therefore it is not lawful to dispossess the possessor in favor of a doubtful cause. Further, if the matter were being heard by a lawful judge, he would never in case of doubt dispossess the party in possession. Therefore, if we
 439 postulate that those princes who are asserting a right are judges in their own cause, they may not lawfully eject a possessor so long as there is any doubt about the title. Further, in the suits and causes of private persons it is never permissible in a doubtful matter to dispossess a lawful possessor. Therefore not in the causes of princes; for the laws are the princes' laws. Therefore, if by human law it is not permissible in a doubtful matter to dispossess a lawful possessor, it can quite validly be objected to princes, "Obey the law thyself hast made, seeing that a man ought to adopt the same law for himself which he has enjoined on others." Also, were it otherwise, a war could be just on both sides and would never be settled. For if in a doubtful matter it were lawful for one side to assert his claim by force, the other might make armed defense, and after the one had obtained what he claimed, the other might afterwards claim it back, and so there would be war without end, to the ruin and tribulation of peoples.

28. Second proposition: If the city or province in regard of which
 the doubt arises has no lawful possessor, as, for instance, if it were open by reason of the death of the lawful lord and there is a doubt whether the King of Spain or the King of France be the heir and no certainty in point of law can be attained, it seems that, if one party wants to settle and make a division or compromise as to part of the claim, the other is bound to accept his proposal, even if that other be the stronger and able to seize the whole by armed force; nor would he have a just cause of war. The proof is that when the merits of a quarrel are equal, one side does no wrong
 440 by claiming an equal part of the thing in dispute. Further, in private disputes also, where the matter is in doubt, one party may not seize the whole thing. Also, in the same way the war would be just on both sides. Also, a just judge would not decree and award the whole thing to either party.

Proposition II.

29. Third proposition: He who is in doubt about his own title is bound, even though he be in peaceable possession, to examine carefully into the cause and give a quiet hearing to the arguments of the other side, if so be he may thus attain certitude either in favor of himself or the other. This is proved by the fact that a man who is in doubt and neglects to ascertain the truth is not in possession in good faith. So also, in a matrimonial cause, if the man who is in lawful possession entertains a doubt whether in truth the woman is his or the other's, it is certain that he is bound to examine the question. Therefore the same principle applies in other causes. Also, princes are judges in their own cases, inasmuch as they have no superior. But it is certain that, if any one raises any objection to a lawful possessor, the judge is bound to examine the case. Therefore in a doubtful matter princes are bound to examine their own case.

Proposition III.

Proposition IV.

30. Fourth proposition: After examination of the case the lawful possessor is not bound to quit possession so long as the doubt reasonably persists, but may lawfully retain it. This is manifestly so, for, firstly, no judge could divest him of it. Therefore he is not bound to give it up, 441 either the whole or part. Also, in a matrimonial cause where the matter is doubtful, the man is under no obligation to give up his possession, as is laid down in *X*, 5, 39, 44, and in *X*, 4, 21, 2. Therefore the like is not required in other causes. And Adrian expressly holds (*qu. 2, Quotlib. 2*) that a party in doubt may retain his possession, and he applies this rule to princes in a doubtful matter. But concerning subjects who are in doubt with regard to the justice of a war, Adrian indeed says (*Quotlib. 2*, on the first principal argument) that a subject in such a case, that is, one who is in doubt whether the alleged cause of a war is a sufficient one or simply whether there exists some sufficient cause for declaring war, may not serve in such a war, even at the command of his prince. The proof is that he exposes himself to the danger of mortal sin. Also, what is not of faith is sin, a doctrine which, according to the doctors and to truth, is to be understood as condemnatory, not only where the conscience is assured or based on opinion, but also where it is in doubt. Sylvester seems to hold the same doctrine, under the word *bellum*, I, § 9.

Adrian's opinion about subjects.

Proposition V, wherein the opinion of Adrian is refuted.

31. But let this be my fifth proposition: In the first place, there is no doubt that in a defensive war subjects may, even though the matter be doubtful, follow their prince to the war; nay, that they are bound to follow him, and also in an offensive war. The first proof is in the fact that, as 442 has been said, a prince is not able, and ought not, always to render reasons for the war to his subjects, and if subjects can not serve in war except they are first satisfied of its justice, the State would fall into grave peril and the door would be opened to wrongdoing. Also, in doubtful matters the safer course ought to be adopted. Now, if subjects in a case of doubt do not follow their prince to the war, they expose themselves to the risk of betraying their State to the enemy, and this is a much more serious thing than fighting against the enemy despite a doubt. Therefore they ought rather to fight. Also, this is manifestly proved by the fact that the licitor is bound to carry out the decree of the judge, even though he has his doubts about its justice, for there would be serious danger in the opposite course. Also, St. Augustine writing against the Manichæans, defends this line of argument, where he says: "If a righteous person be in the military service of a sacrilegious king, he may consistently go to war at his command, provided that it is certain that the command laid on him is not contrary to the Divine precepts or that it is not certain whether it be so" (*C. 23, qu. 1, can. quid culpatur*). Here we have St. Augustine expressly declaring that if it is not certain—that is, if there is a doubt—whether it be against God's precepts, the subject may lawfully go to the war. And however Adrian may twist and turn, he can not free himself from the authority of St. Augustine, for our proposition is, beyond cavil, the conclusion at which St. Augustine arrives. Nor does it avail to 443 say that such a person ought to get rid of his doubt and make his conscience

This passage is in bk. 22, *Contra Faustum*, c. 75, though not in quite the same words.

acquiesce in the justice of the war, for it remains that, mortally speaking, this is impossible, as in other cases of doubt. Now, Adrian's mistake seems to be in thinking that, if I am in doubt whether this war is just for my prince or whether there be a just cause for this war, it immediately follows that I am in doubt whether or no I ought to go to this war. I admit that I am no wise justified in doing what my conscience doubts about and that, if I am doubtful about the lawfulness of doing any given thing, I sin if I do it. But any doubt of mine about the justice of this war does not necessarily involve a doubt whether I ought to fight or serve in this war. Nay, it is quite the other way about. For although I may doubt whether the war is just, yet the next point is that I may lawfully serve in the field at my prince's command. It is precisely the same as with a lictor who has his doubts whether the judge's decree is just, it does not follow therefrom that he doubts whether or no he ought to carry it into execution; he knows that he is bound to carry it into execution. So, also, if the doubt be whether this woman be my wife; I am, consequent upon such doubt, bound to render her conjugal rights.

The cause of
Adrian's
error.

32. The fourth doubt is: Whether a war can be just on both sides. The following is my answer: First proposition: Apart from ignorance the
444 case clearly can not occur, for if the right and justice of each side be certain, it is unlawful to fight against it, either in offense or in defense. Second proposition: Assuming a demonstrable ignorance either of fact or of law, it may be that on the side where true justice is the war is just of itself, while on the other side the war is just in the sense of being excused from sin by reason of good faith, because invincible ignorance is a complete excuse. Also, on the side of the subjects at any rate, this may often occur; for even if we assume that a prince who is carrying on an unjust war knows about its injustice, still (as has been said) subjects may in good faith follow their prince, and in this way the subjects on both sides may be doing what is lawful when they fight.

Doubt IV.

Proposi-
tion I.

Proposi-
tion II.

Although
their prince
knows the in-
justice of the
war, the sub-
jects on each
side may
sometimes
lawfully fight.

33. Hence arises the fifth doubt: Whether one who has in ignorance gone in an unjust war and subsequently is convinced of its injustice is bound to make amends therefor. This may be asked both about a prince and about a subject. My first proposition is: If the injustice of the war had been within reach of proof by him, he is bound when he learns of its injustice to give back what he has taken away and not yet consumed—that is, to the extent to which he has been enriched; but he need make no amends as regards what he has consumed, because the rule of law is that a person who is not in fault ought not to be damnified, just as one who in good faith attended a sumptuous banquet given by a thief where stolen things were consumed would be under no obligation to give redress therefor, save
445 perhaps up to the amount that his meal would have cost him at home. Sylvester, however, says, under the word *bellum*, I, § 9, that if our man was in doubt about the injustice of the war yet followed his lord's authority, he is liable to make good everything, because it was with bad faith that he fought.

Doubt V.

Proposi-
tion I.

Sylvester's
opinion.

Proposition II;
against
Sylvester's
opinion.

Note!

Now, let my second proposition, in conformity with the foregoing, be: Our man is not bound to make good what has been consumed, any more than the other side would be, because (as has been said) his fighting was lawful and in good faith. Sylvester's contention would, however, be sound if the man had really been in doubt whether it was lawful for him to go to the war, for he would then be acting against his conscience. Now, much attention must be paid to the admitted fact that a war may be just and lawful in itself and yet owing to some collateral circumstance may be unlawful. For it is admitted that one may be entitled to recapture a city or a province and yet that, because of some scandal, this may become quite unlawful. For inasmuch as (according to what has been said before) wars ought to be waged for the common good, if some one city can not be recaptured without greater evils befalling the State, such as the devastation of many cities, great slaughter of human beings, provocation of princes, occasions for new wars to the destruction of the Church (in that an opportunity is given to pagans to invade and seize the lands of Christians), it is indubitable that the prince is bound rather to give up his own rights and abstain from war. For it is clear that if the King of France, for example, had a right to retake Milan, but by the war both the Kingdom of France and the Duchy of Milan would suffer intolerable ills and heavy woes, it would not be right for him to retake it. This is because that war ought to take place either for the good of France or for the good of Milan. Therefore, when, on the contrary, great ills would befall each side by the war, it could not be a just war. 446

Doubt I,
arising from
the last principal
question.

Argument for
the affirmative.

34. With regard to another question, namely, what degree of stress is lawful in a just war, there are also many doubts. The first is: Whether it is lawful in war to kill the innocent. It seems that it is; because, in the first place, the Sons of Israel slew children at Jericho, as appears from *Joshua*, ch. 6, and afterwards Saul slew children in Amalek (*I Samuel*, ch. 15), and in both these cases it was by the authority and at the bidding of God. "Now, whatever is written is written for our instruction," as appears from *Romans*, ch. 15. Therefore, if a war of the present day be just, it will be lawful to kill the innocent.

Proposition I.
Proof 1.

Proof 2.

Proof 3.

Proof 4.

Confirmation.

35. With regard to this doubt, let my first proposition be: The deliberate slaughter of the innocent is never lawful in itself. This is proved, firstly, by *Exodus*, ch. 23: "The innocent and righteous slay thou not." Secondly, the basis of a just war is a wrong done, as has been shown above. But wrong is not done by an innocent person. Therefore war may not be employed against him. Thirdly, it is not lawful within a State to punish the innocent for the wrongdoing of the guilty. Therefore this is not lawful among enemies. Fourthly, were this not so, a war would be just on both sides, although there was no ignorance, a thing which, as has been shown, is impossible. And the consequence is manifest, because it is certain that innocent folk may defend themselves against any who try to kill them. And all this is confirmed by *Deuteronomy*, ch. 20, where the Sons of Israel were ordered to take a certain city by force and to slay every one except women and little ones. 447

36. Hence it follows that even in war with the Turks it is not allowable to kill children. This is clear, because they are innocent. Aye, and the same holds with regard to the women of unbelievers. This is clear, because so far as the war is concerned, they are presumed innocent; but it does not hold in the case of any individual woman who is certainly guilty. Aye, and this same pronouncement must be made among Christians with regard to harmless agricultural folk, and also with regard to the rest of the peaceable civilian population, for all these are presumed innocent until the contrary is shown. On this principle it follows that it is not lawful to slay either foreigners or guests who are sojourning among the enemy, for they are presumed innocent, and in truth they are not enemies. The same
448 principle applies to clerics and members of a religious order, for they in war are presumed innocent unless the contrary be shown, as when they engage in actual fighting.

37. Second proposition: Sometimes it is right, in virtue of collateral
circumstances, to slay the innocent even knowingly, as when a fortress or city is stormed in a just war, although it is known that there are a number of innocent people in it and although cannon and other engines of war can not be discharged or fire applied to buildings without destroying innocent together with guilty. The proof is that war could not otherwise be waged against even the guilty and the justice of belligerents would be balked. In the same way, conversely, if a town be wrongfully besieged and rightfully defended, it is lawful to fire cannon-shot and other missiles on the besiegers and into the hostile camp, even though we assume that there are some children and innocent people there.

Proposition II.

Great attention, however, must be paid to the point already taken, namely, the obligation to see that greater evils do not arise out of the war than the war would avert. For if little effect upon the ultimate issue of the war is to be expected from the storming of a fortress or fortified town wherein are many innocent folk, it would not be right, for the purpose of assailing a few guilty, to slay the many innocent by use of fire or engines
449 of war or other means likely to overwhelm indifferently both innocent and guilty. In sum, it is never right to slay the guiltless, even as an indirect and unintended result, except when there is no other means of carrying on the operations of a just war, according to the passage (*St. Matthew*, ch. 13) "Let the tares grow, lest while ye gather up the tares ye root up also the wheat with them."

Short and decided answer of the author.

38. Here a doubt may arise whether the killing of guiltless persons is lawful when they may be expected to cause danger in the future; thus, for example, the children of Saracens are guiltless, but there is good reason to fear that when grown up they will fight against Christians and bring on them all the hazards of war. Moreover, although the adult male civilians of the enemy who are not soldiers are presumed to be innocent, yet they will hereafter carry a soldier's arms and cause the hazard named. Now, is it lawful to slay these youths? It seems so, on the same principle which justifies the incidental killing of other guiltless persons. Also (*Deuteronomy*,

An incidental doubt.

ch. 20) the Sons of Israel were ordered when assaulting any city to slay "every adult male." Now, it can not be presumed that all of these would be guilty.

The author's
answer.

My answer is that although this killing may possibly be defended, yet I believe that it is in no wise right, seeing that evil is not to be done even in order to avoid greater evil still, and it is intolerable that any one should be killed for a future fault. There are, moreover, other available measures of precaution against their future conduct, namely, captivity, exile, etc., as we shall forthwith show. Hence it follows that, whether victory has already been won or the war is still in progress, if the innocence of any soldier is evident and the soldiers can let him go free, they are bound to do so.

On the argu-
ment for the
affirmative.

To the argument on the opposite side my rejoinder is that the slaughter in the instances named was at the special command of God, who was wroth against the people in question and wished to destroy them utterly, just as he sent fire on Sodom and Gomorrah which devoured both guiltless and guilty together. He, however, is Lord of all and has not given this license as a common law. And the same answer might be made to that passage

On the pas-
sage last cited
from Deuter-
onomy.

in *Deuteronomy*, ch. 20. But, inasmuch as what is there enjoined is in the form of a common law of war for all future time, it would rather seem that the Lord enjoined it because all adult males in an enemy State are deemed guilty, and guiltless can not be distinguished from guilty. Therefore all may be killed.

Doubt II.
Proposi-
tion I.

39. The second doubtful point is whether in a just war it is lawful to despoil innocent enemy-subjects. Let my first proposition be: It is certainly lawful to despoil the innocent of goods and things which the enemy would use against us, such as arms, ships, and engines of war. This is clear, because otherwise we could not gain the victory, which is the aim of war. Nay, it is also lawful to take the money of the innocent and to burn and destroy their grain and kill their horses, if this is requisite in order to sap the enemy's strength. Hence follows the corollary that if the war goes on for an indefinitely long time it is lawful utterly to despoil all enemy-subjects, guilty and guiltless alike, for it is from their resources that the enemy is feeding an unjust war, and, on the other hand, his strength is sapped by this spoliation of his citizens.

Corollary.

Proposi-
tion II.

Sylvester.

40. Second proposition: If a war can be carried on effectively enough without the spoliation of the agricultural population and other innocent folk, they ought not to be despoiled. Sylvester maintains this (under the word *bellum*, I, § 10) on the ground that war is founded on a wrong done, and therefore the rights of war may not be enforced against the innocent if the wrong can be redressed in another quarter. Aye, and Sylvester adds that, even if there were good reason to despoil the innocent, yet when the war is over the victor is bound to restore to them whatever is left. This, however, I do not think necessary, because, as said above,

Sylvester's
dictum a
pious one, but
does not seem
to the author
necessary.

whatever is done in right of war receives the construction most favorable to the claims of those engaged in a just war. Hence, whatever has been lawfully seized is not in my opinion subject to restitution. All the same,

Sylvester's remark is a pious one and not indefensible. But the spoliation of foreigners and travelers on enemy soil, unless they are obviously at fault, is in no wise lawful, they not being enemies.

41. Third proposition: If the enemy refuse to restore things wrongfully seized by them and the injured party can not otherwise properly recoup himself, he may do so wherever satisfaction is obtainable, whether from guilty or from innocent. For instance, if French brigands made a raid into Spanish territory and the French King would not, though able, compel them to restore their booty, the Spanish might, on the authorization of their sovereign, despoil French merchants or farmers, however innocent these might be. This is because, although the French State or Sovereign might initially be blameless, yet it is a breach of duty, as St. Augustine says, for them to neglect to vindicate the right against the wrongdoing of their subjects, and the injured sovereign can take satisfaction from every member and portion of their State. There is, accordingly, no inherent injustice in the letters of marque and reprisals which princes often issue in such cases, because it is on account of the neglect and breach of duty of the other prince that the prince of the injured party grants him this right to recoup himself even from innocent folk. These letters are, however, hazardous and open the way to plunder.

Proposition III.

Letters of reprisal not unjust in themselves, however hazardous.

42. The third doubtful point is: Assuming the unlawfulness of the slaughter of children and other innocent parties, is it permissible, at any rate, to carry them off into captivity and slavery? This can be cleared up in a single proposition, namely: It is in precisely the same way permissible to carry the innocent off into captivity as to despoil them, liberty and slavery being included among the good things of Fortune. And so when a war is at that pass that the indiscriminate spoliation of all enemy-subjects alike and the seizure of all their goods are justifiable, then it is also justifiable to carry all enemy-subjects off into captivity, whether they be guilty or guiltless. And inasmuch as war with pagans is of this type, seeing that it is perpetual and that they can never make amends for the wrongs and damages they have wrought, it is indubitably lawful to carry off both the children and the women of the Saracens into captivity and slavery. But inasmuch as, by the law of nations, it is a received rule of Christendom that Christians do not become slaves in right of war, this enslaving is not lawful in a war between Christians; but if it is necessary having regard to the end and aim of war, it would be lawful to carry away even innocent captives, such as children and women, not indeed into slavery, but so that we may receive a money-ransom for them. This, however, must not be pushed beyond what the necessity of the war may demand and what the custom of lawful belligerents has allowed.

Doubt III.

Answer contained in a single proposition.

Christians may not enslave Christians under the law of war.

43. The fourth doubtful point is: Whether it is lawful at any rate to kill hostages who have been taken from the enemy, either in time of truce or on the conclusion of a war, if the enemy break faith and do not abide by their undertakings. My answer is in a single proposition: If the hostages are in other respects among the guilty, as, for instance, because they have

Doubt IV.

Answered in a single proposition.

borne arms, they may rightfully be killed in that case; if, however, they are innocent, as, for instance, if they be children or women or other innocent folk, it is obvious from what has been said above that they can not be killed.

Doubt V.
Four points to
be noted.

44. The fifth doubt is: Whether in a just war it is lawful to kill, at any rate, all the guilty. Prefatory to an answer be it noted that, as is shown by what has been said above, war is waged: Firstly, in defense of ourselves and what belongs to us; secondly, to recover things taken from us; thirdly, to avenge a wrong suffered by us; fourthly, to secure peace and security.

Proposition I.

45. This premised, let my first proposition be: In the actual heat of battle, either in the storming or in the defense of a city, all who resist may be killed indiscriminately; and, briefly, this is so as long as affairs are in peril. This is manifest, because combatants could not properly effect their purpose 455

Wherein con-
sists the diffi-
culty of this
doubt.

save by removing all who hinder and resist them. All the doubt and difficulty, however, is to know whether, when we have won our victory and the enemy is no longer any danger to us, we may kill all who have borne arms against us. Manifestly, yes. For, as shown above, one of the military precepts given by the Lord (*Deuteronomy*, ch. 20) was that when a city of the enemy had been taken all dwellers in it were to be killed. The words of the passage are: "When thou comest nigh unto a place to fight against it, then proclaim peace unto it. And it shall be if it make thee answer of peace, and open unto thee, that all the people that is found therein shall be saved and shall be tributaries unto thee and shall serve thee. But if it will make no peace with thee, but will make war against thee, then thou shalt besiege it. And when the Lord thy God hath delivered it into thine hands, thou shalt smite every male thereof with the edge of the sword, but not the women and the little ones."

Argument
for the
affirmative

Proposi-
tion II.

46. Second proposition: Even when victory has been won and no danger remains, it is lawful to kill the guilty. The proof is that, as said above, war is ordained not only for the recovery of property, but also for the avenging of wrongs. Therefore the authors of a past wrong may be killed therefor. Again, this is permissible against our own wrongdoing citizens. Therefore also against foreigners; for, as said above, a prince 456 when at war has by right of war the same authority over the enemy as if he were their lawful judge and prince. And a further reason is that, although there be no present danger from the enemy, yet security for the future can not be had, unless the enemy be restrained by the fear of punishment.

Proposi-
tion III.

47. Third proposition: Merely by way of avenging a wrong it is not always lawful to kill all the guilty. The proof is that even among citizens it would not be lawful, not even where the wrong was done by the whole city or district, to kill all the delinquents; nor in a common rebellion would it be permissible to slay and destroy the whole population. Accordingly, for such a deed, St. Ambrose interdicted Theodosius from the church. For such conduct would not be for the public good, which is nevertheless the end and aim of both war and peace. Therefore, it is not right to kill all the guilty among the enemy. We ought, then, to take into account the nature of the wrong done by the enemy and of the damage they have caused and

of their other offenses, and from that standpoint to move to our revenge and punishment, without any cruelty and inhumanity. In this connection Cicero says (*Offices*, bk. 2) that the punishment which we inflict on the guilty must be such as equity and humanity allow. And Sallust says: "Our ancestors, the most religious of men, took naught from those they conquered save what was authorized by the nature of their offenses."

- 457 48. Fourth proposition: Sometimes it is lawful and expedient to kill all the guilty. The proof is that war is waged in order to get peace and security. But there are times when security can not be got save by destroying all one's enemies: and this is especially the case against unbelievers, from whom it is useless ever to hope for a just peace on any terms. And as the only remedy is to destroy all of them who can bear arms against us, yprovided they have already been in fault. That is how the injunction in *Deuteronomy*, ch. 20, is to be interpreted. Otherwise, however, in a war with Christians, where I do not think this would be allowable. For, as it needs must be that scandals come (*St. Matthew*, ch. 18) and also wars between princes, it would involve the ruin of mankind and of Christianity if the victor always slew all his enemies, and the world would soon be reduced to solitude, and wars would not be waged for the public good, but to the utter ruin of the public. The measure of the punishment, then, must be proportionate to the offense, and vengeance ought to go no further, and herein account must be taken of the consideration that, as said above, subjects are not bound, and ought not, to scrutinize the causes of a war, but can follow their prince to it in reliance on his authority and on public
- 458 counsels. Hence in the majority of cases, although the war be unjust on the other side, yet the troops engaged in it and who defend or attack cities are innocent on both sides. And therefore after their defeat, when no further danger is present, I think that they may not be killed, not only not all of them, but not even one of them, if the presumption is that they entered on the strife in good faith.

Proposition IV.

Here an incidental answer is given to the principle advanced, in favor of Proposition I.

49. Sixth doubt: Whether it is lawful to slay those who have surrendered or been captured, supposing them also to have been guilty. My answer is that, speaking absolutely, there is nothing to prevent the killing of those who have surrendered or been captured in a just war so long as abstract equity is observed. Many of the rules of war have, however, been fashioned by the law of nations, and it seems to be received in the use and custom of war that captives, after victory has been won (unless perchance they have been routed) and all danger is over, are not to be killed, and the law of nations must be respected, as is the wont among good people. But I do not read or hear of any such custom with regard to those who have surrendered; nay, on the capitulation of a fortress or city it is usual for those who surrender to try and provide for themselves in the conditions of the capitulation, as that their heads shall be safe and that they shall be let go in safety; that is, they fear that an unconditional surrender would mean
- 459 their deaths. We read of this being several times done. Accordingly, it does not seem unjust that, if a city capitulates without taking any such

Doubt VI.

The author's answer.

precautions, the more notorious offenders should be put to death on the order of the prince or a judge.

Doubt VII.
Proposition I.

50. Seventh doubt: Whether everything that is captured in a just war becomes the property of the captor and seizor. My first proposition hereon is: There is no doubt that everything captured in a just war vests in the seizor up to the amount which provides satisfaction for the things that have been wrongfully seized and which covers expenses also. This needs no proof, for that is the end and aim of war. But, apart from all consideration both of restitution and satisfaction, and looking at the matter from the standpoint of the law of war, we must distinguish according as the things captured in war are movables (like money, garments, silver, and gold), or are immovables (like lands, cities, and fortresses).

Proposition II.

51. This being assumed, let my second proposition be: All movables vest in the seizor by the law of nations, even if in amount they exceed what will compensate for damages sustained. This is clear from *Dig.*, 49, 15, 28 and 24, and from can. 9, Dist. 1, and it is more expressly laid down in *Inst.*, 2, 1, 17, where it is said that "by the law of nations whatever is taken from the enemy immediately becomes ours, even so far as that free persons may be made our slaves." And St. Ambrose says (*Liber de Patriarchis*) that when Abraham slew the four kings their spoil belonged to him as the conqueror, although he refused to take it (*Genesis*, ch. 14, and can. 25, C. 23, qu. 5). And this is confirmed by the authority of the Lord (*Deuteronomy*, ch. 20), where He says concerning the storming of a town: "All the spoil thereof thou shalt divide with the army and thou shalt eat of the spoil of thine enemies." Adrian holds this opinion in his *quaestio* on restitution, in the special *quaestio* on war. So, also, Sylvester, under the word *bellum*, § 1 and § 9, where he says that he who fights a just cause is not bound to give back his booty (can. 2, C. 23, qu. 7). "Hence it follows that what is taken in war is not used as a set-off against the principal debt, as the Archdeacon also holds (can. 2, C. 23, qu. 2)." And Bartolus is of the same opinion, in his comment on *Dig.*, 49, 15, 28. And this is understood to be so even if the enemy be ready to make amends in other ways for the damages and wrongs suffered. Sylvester, however, limits this, and rightly, allowing it only until a satisfaction sufficient in equity has been taken for the damages and wrongs suffered. For it is not to be imagined that, if the French have ravaged some one district or insignificant town in Spain, the Spanish might also, if they could, ravage the whole of France; they can only retort in a manner proportionate in kind and degree to the wrong done, according to the estimate of a good man.

Corollary.

Incidental
doubt.
Answer
thereto.
Proposition III.
Sylvester.

52. But on this conclusion a doubt arises, namely, whether it is right to give a city up to the soldiery to sack. My answer is, and let this be my third proposition: This is not unlawful in itself, if necessary for the conduct of the war or as a deterrent to the enemy or as a spur to the courage of the troops. So Sylvester, under the word *bellum*, § 10. It is on the same principle as that which justifies the burning of a city for reasonable cause. Nevertheless, inasmuch as such authorization to sack results in many

horrors and cruelties, enacted beyond all humane limits by a barbarous soldiery, such as slaughter and torture of the innocent, rape of virgins, dishonor of matrons, and looting of temples, it is undoubtedly unjust in the extreme to deliver up a city, especially a Christian city, to be sacked, without the greatest necessity and weightiest reason. If, however, the necessities of war require it, it is not unlawful, even if it be likely that the troops will perpetrate foul misdeeds of this kind, which their generals are none the less bound to forbid and, as far as they can, to prevent.

53. Fourth proposition: Despite all this, soldiers may not, without the authority of their prince or general, go looting or burning, because they are themselves not judges, but executive officers; and those who do otherwise are bound to make restitution. Proposition IV.

54. Now, with regard to immovable property and things, the difficulty is greater, and let my fifth proposition be: There is no doubt about the lawfulness of seizing and holding the land and fortresses and towns of the enemy, so far as is necessary to obtain compensation for the damages he has caused. For instance, if the enemy has destroyed a fortress of ours, or has burnt a city or vineyards or olive gardens, we may in turn seize his land or fortress or city and hold it. For if it is lawful to exact compensation from the enemy for the things of ours which he has taken, it is certain that by the divine law and natural law it is not more lawful to take recompense therefore in movables than in immovables. Proposition V.

55. Sixth proposition: In order to obtain security and avoid danger from our enemy it is also lawful to seize and hold a fortress or city belonging to him which is necessary for our defense or for taking away from him an opportunity of hurting us. Proposition VI.

56. Seventh proposition: It is also lawful, in return for a wrong received and by way of punishment, that is, in revenge, to mulct the enemy of a part of his territory in proportion to the character of the wrong, or even on this ground to seize a fortress or town. This, however, must be done within due limits, as already said, and not as utterly far as our strength and armed force enable us to go in seizing and storming. And if necessity and the principle of war require the seizure of the larger part of the enemy's land, and the capture of numerous cities, they ought to be restored when the strife is adjusted and the war is over, only so much being retained as is just, in way of compensation for damages caused and expenses incurred and of vengeance for wrongs done, and with due regard for equity and humanity, seeing that punishment ought to be proportionate to the fault. Thus it would be intolerable that, if the French raided the flocks of the Spanish or burnt a single district, the latter should be allowed to seize the whole Kingdom of France. Now, the lawfulness of seizing on this score either a part of enemy territory or an enemy city appears from *Deuteronomy*, ch. 20, where permission is granted in war to seize a city that has refused to accept terms of peace. Again, internal wrongdoers may be punished in this way, that is, they may be deprived of house or land or a fortress, in proportion to the character of the circumstances. Therefore foreigner wrongdoers also. Proposition VII.

Again, a superior judge has competence to mulct the author of a wrong by taking away from him a city (for instance) or a fortress. Therefore a prince who has suffered wrong can do this too, because by the law of war he is put in the position of a judge. Again, it was in this way and by this title that the Roman Empire grew and developed, that is, by occupation, in right of war, of cities and provinces belonging to enemies who had injured them, and yet the Roman Empire is defended as just and lawful by St. Augustine, St. Jerome, St. Ambrose, St. Thomas, and other reverend doctors. Nay, it might be held approved by God in the passage, "Render unto Caesar the 464 things that are Caesar's," and by St. Paul, who appealed unto Caesar and who in *Romans*, ch. 13, gave an admonition to be subject to the higher powers and to princes and to pay tribute to those who at that time, all of them, derived their authority from the Roman Empire.

Doubt VIII.

57. Eighth doubt: Whether it is lawful to impose a tribute on conquered enemies. My answer is that it is undoubtedly lawful, not only in order to recoup damages, but also as a punishment and by way of revenge. This is clear enough from what has been said above and from the passage in *Deuteronomy*, ch. 20, which says that when the Jews have approached a city with good cause in order to attack it, if the city receives them and opens its gates, all the people therein shall be saved and shall serve the Jews with payment of tribute. And this law and usage of war has prevailed.

Answer.

Doubt IX.

58. Ninth doubt: Whether it is lawful to depose the princes of the enemy and appoint new ones or keep the principedom for oneself. First proposition: This is not unqualifiedly permissible, nor for any and every cause of just war, as appears from what has been said. For punishment should not exceed the degree and nature of the offense. Nay, punishments should be awarded restrictively, and rewards extensively. This is not a rule of human law only, but also of natural and divine law. Therefore, even assuming that the enemy's offense is a sufficient cause of war, it will 465 not always suffice to justify the overthrow of the enemy's sovereignty and the deposition of lawful and natural princes; for these would be utterly savage and inhumane measures.

Proposition I.

Proposition II.

59. Second proposition: It is undeniable that there may sometimes arise sufficient and lawful causes for effecting a change of princes or for seizing a sovereignty; and this may be either because of the number and aggravated quality of the damages and wrongs which have been wrought or, especially, when security and peace can not otherwise be had of the enemy and grave danger from them would threaten the State if this were not done. This is obvious, for if the seizure of a city is lawful for good cause, as has been said, it follows that the removal of its prince is also lawful. And the same holds good of a province and the prince of a province, if proportionately graver cause arise.

Note!

Note, however, with regard to Doubts VI to IX, that sometimes, nay, frequently, not only subjects, but princes, too, who in reality have no just cause of war, may nevertheless be waging war in good faith, with such good faith, I say, as to free them from fault; as, for instance, if the war is

made after a careful examination and in accordance with the opinion of learned and upright men. And since no one who has not committed a
 466 fault should be punished, in that case, although the victor may recoup himself for things that have been taken from him and for any expenses of the war, yet, just as it is unlawful to go on killing after victory in the war has been won, so the victor ought not to make seizures or exactions in temporal matters beyond the limits of just satisfaction, seeing that anything beyond these limits could only be justified as a punishment, such as could not be visited on the innocent.

60. All this can be summarized in a few canons or rules of warfare. Three rules
of warfare,
I.
 First canon: Assuming that a prince has authority to make war, he should first of all not go seeking occasions and causes of war, but should, if possible, live in peace with all men, as St. Paul enjoins on us (*Romans*, ch. 12). Moreover, he should reflect that others are his neighbors, whom we are bound to love as ourselves, and that we all have one common Lord, before whose tribunal we shall have to render our account. For it is the extreme of savagery to seek for and rejoice in grounds for killing and destroying men whom God has created and for whom Christ died. But only under compulsion and reluctantly should he come to the necessity of war.

Second canon: When war for a just cause has broken out, it must not
 467 be waged so as to ruin the people against whom it is directed, but only so as to obtain one's rights and the defense of one's country and in order that from that war peace and security may in time result.

Third canon: When victory has been won and the war is over, the
 victory should be utilized with moderation and Christian humility, and the victor ought to deem that he is sitting as judge between two States, the one which has been wronged and the one which has done the wrong, so that it will be as judge and not as accuser that he will deliver the judgment whereby the injured state can obtain satisfaction, and this, so far as possible should involve the offending state in the least degree of calamity and misfortune, the offending individuals being chastised within lawful limits; and an especial reason for this is that in general among Christians all the fault is to be laid at the door of their princes, for subjects when fighting for their princes act in good faith and it is thoroughly unjust, in the words of the poet, that—

Quidquid delirant reges, plectantur Achivi.

(For every folly their Kings commit the punishment should fall upon the Greeks.)

DE INDIS ET DE IVRE BELLI RELECTIONES

BEING PARTS OF

RELECTIONES THEOLOGICAE XII

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THE REVISED TEXT

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PREFATORY REMARKS CONCERNING THE TEXT.

TITLE.

The lectures, *De Indis* and *De iure belli*, were delivered by Franciscus de Victoria in 1532, as is clear from the opening paragraph of the *De Indis*. They were not intended for publication by their author and consequently it is probable that he did not give them titles, but simply recited the Scriptural text upon which he intended to base his lecture. When, however, after the author's death, these two lectures on the Indians of the New World, together with ten other lectures by the same author, were being prepared for publication under the general title, "*Relectiones Theologicae XII*," the editors perhaps felt the necessity of giving a title to each *relectio*. Consequently, the first of the two studies on the Indians is entitled "*De Indis insularis*" in the first edition, "*De Indis recenter inventis*" in the second edition, and "*De Indis noviter inventis*" in the third and subsequent editions. The title of this study as given in the second edition has been retained in the present text in preference to that given in the first edition, because it is the more correct of the two furnished by contemporaries. The second of the two studies on the Indians is entitled "*De Indis, sive de iure belli Hispanorum in barbaros*" in all editions and by subsequent writers is quoted simply as *De iure belli*.

Concerning the title of the collection, *Relectiones Theologicae XII*, Ompteda¹ and Morhofius² erroneously call them *Prælectiones* instead of *Relectiones*, while Simon in his edition (Cologne and Frankfort, 1696) gives the title as *Relectiones Morales*. Simon also gives the number as thirteen and in this is undoubtedly following the Ingolstadt edition of 1580.³ There is also some discrepancy among authorities as to the exact *relectiones* contained in this work. Antonio,⁴ whom Hurter⁵ apparently followed, includes an otherwise unknown work, *De silentii obligatione*, in the *Relectiones Theologicae XII*, but it does not appear in the copies of this work that have been accessible to me. The *Nouvelle Bibliographie Générale* includes not only the above-mentioned *De silentii obligatione*, but also an altogether separate work, the *Summa Sacramentorum Ecclesiae*.⁶

The first edition of the *Relectiones* was published at Lyons in 1557, in two volumes, under the title I have given above. The individual *relectiones*

¹D. H. L. OMPTEDA, *Litteratur des gesammten sowohl natürlichen als positiven Völkerrechts* (Regensburg, 1785), p. 169.

²D. G. MORHOFIUS, *Polyhistor literarius, philosophicus et practicus* (Ed. 3, Lubeck, 1732), vol. II, I, 14, 41, p. 96.

³See the title page of SIMON's edition in the Photographic Reproduction in this volume.

⁴NICOLAUS ANTONIO, *Bibliotheca Hispana nova*, vol. I (Madrid, 1783), p. 497.

⁵HUGO HURTER, *Nomenclator literarius theologiae Catholicae*, vol. II³ (Innsbruck, 1906), p. 1370.

⁶*Summa Sacramentorum Ecclesiae, ex doctrina fratris Francisci a Victoria, . . . Per Reverendum patrem Praesentatum, Fratrem Thomam a Chaves, illius discipulum, . . . ex secunda Authoris recognitione . . . aucta, locupletata, atque illustrata est* (Romae, Apud Iulium Accoltum in platea Peregrini, MDLXVII).

were arranged in the two volumes, precisely as indicated in the Table of Contents of that edition, as follows:

- Tomus Primus:* *De potestate Ecclesiae, prior et posterior,*
De potestate civili.
De potestate Papae et concilii.
De Indis prior.
De Indis posterior, sive de iure belli.
De matrimonio.
Tomus Secundus: *De augmento charitatis.*
De temperantia.
De homicidio.
De simonia.
De magia.
De eo ad quod tenetur veniens ad usum rationis.

These are substantially the same as those given in subsequent editions. Yet the second edition gives the number as eleven, counting the *De Indis* and the *De iure belli* as one *relectio*. The fourth edition (Lyons, 1586) puts the number at thirteen, counting the two *relectiones* on the power of the Church as two, and in this is followed apparently by Holland,¹ and avowedly by Walker.² Hallam,³ who saw only the Venetian edition (1626), makes the same mistake and accuses Antonio of perhaps never having seen the work because he gives the number as twelve. Yet the two pairs of *relectiones* which cause this difference ought not to be considered in the same light. The first pair is clearly on the same subject and ought to be treated simply as two parts of a single *relectio*, although they were delivered at different times; the second deals with two distinctly different subjects, as the very title itself indicates, although the second is suggested by the first. Therefore they ought to be considered as two *relectiones*, as in the first edition.

MANUSCRIPTS.

Of this work, it is probable that there are no manuscript copies extant. At least, to the editor of the third printed edition (Ingolstadt, 1580), none was available, for he fails to mention any, and, moreover, states that he had corrected the first edition (Lyons, 1557) by the second edition (Salamanca, 1565), except where this was manifestly wrong, in which case he took counsel with eminent theologians and philosophers. If a manuscript copy of the *Relectiones* had been extant, it would probably have been in some Spanish or French library and accessible to Spanish and French biographers of Victoria. But Antonio,⁴ a Spaniard, in his life of Victoria, makes no mention of any, nor is a manuscript copy mentioned by Victoria's

¹T. E. HOLLAND, *Studies in international law* (Oxford, 1898), p. 51.

²T. A. WALKER, *A history of the law of nations*, vol. 1, (Cambridge, 1899), p. 214.

³HENRY HALLAM, *Introduction to the literature of Europe in the fifteenth, sixteenth, and seventeenth centuries* (London, n. d.), p. 314, column 2, note 1.

⁴NICOLAUS ANTONIO, *op. cit.*, pp. 496-497.

French biographers, Dupin,¹ Tournon,² and Quétif-Echard.³ Surely, a manuscript would have been mentioned by one of his later biographers, Hinojosa,⁴ Barthélemy,⁵ and Hurter,⁶ if any had been discovered in the intervening years.

Yet even if there be extant somewhere in obscurity a manuscript of Victoria's *Relectiones*, it would not materially affect the text as transmitted in the first or second editions, as will appear from the rest of these remarks. To secure a complete understanding of this assertion, it is necessary, first to define the word *relectio*. At Salamanca it meant a kind of theological exercise not very unlike those disputations which were in use in the most celebrated universities of the Middle Ages under the name of *quaestiones quodlibeticae*. Those *quaestiones*, which seemed to be the more difficult and more useful of all that had been discussed in the daily prelections of an entire year, were reconsidered in *relectiones* in the public assembly of learned men by the same doctor, in order that they might be much more accurately decided than theretofore and receive as it were the finishing touches.

The manuscripts, from which the first and second editions of the *Relectiones Theologicae XII* were edited, were not written by Victoria, because he never intended publishing the lectures and may have used only notes or outlines in delivering them, but were written by Victoria's students from dictation, probably when the lectures were first delivered, because it is not likely, though certainly possible, that they would have been dictated again in the public assembly at the end of the year. At any rate, there would be as many manuscripts of the *Relectiones* as there were auditors, and, since none of these manuscripts belonged to the author, the authority of the individual manuscript would be considerably lessened, for it is the consensus of the manuscripts that would give what the author probably dictated. This consensus is represented by the first and second editions and would not in all probability be disturbed by a single manuscript. Moreover, a single manuscript would be subject to all the errors attributable to writing from dictation. These reasons will become clearer from the criticisms of the first and second editions, whose editors saw and used manuscript copies of the text.

FIRST EDITION.

A little over ten years after Victoria's death, "par grace & privilege du Roy est permis à Jacques Boyer libraire de Salamanca, imprimer ou faire imprimer vne fois ou plusieurs ce present liure intitule, Reuerendiss. Patris Fratriscis Francisci de Victoria, ordinis Prædicatorum, sacræ Theo-

¹ELLIES DUPIN, *Nouvelle bibliothèque des auteurs ecclésiastiques*, vol. xiv (Paris, 1703), pp. 172-175.

²ANTOINE TOURNON, *Histoire des hommes illustres de l'Ordre de Saint Dominique*, vol. iv (Paris, 1747), pp. 55-65.

³JACQUES QUÉTIF and JACQUES ECHARD, *Scriptores Ordinis Prædicatorum*, vol. ii (Paris, 1721), pp. 128-130.

⁴EDUARDO DE HINOJOSA, *Estudios sobre la historia del derecho español* (Madrid, 1903), pp. 179-248.

⁵JOSEPH BARTHÉLEMY, *François de Vitoria*. In *Les fondateurs du droit international* (Paris, 1904), pp. 1-36.

⁶HUGO HURTER, *op. cit.*, pp. 1367-1370.

logiæ in Salmanticensi Academia quondam primarij Professoris Relectiões duodecim Theologicæ.”¹ This, the first edition of the *Relectiones*, bears the imprint of Lyons, 1557, and was prepared for the following reasons, as Boyer relates in his dedicatory letter to the Inquisitor, Ferdinand Valdez.

After mentioning the fact that the works of the early Fathers had been “truncati, confusi, obscuri, perplexi, ac denique alienis inventis conspurcati,” Boyer says that this same fate befell Victoria’s writings.

“For one person had mutilated them by making an unhappy transcript, another had read them incorrectly, a third by supressing Victoria’s name had usurped a good and large portion of the work, and many had placed the comments of their foolish mind in the midst of his scrupulous doctrine and singular erudition not otherwise than a counterfeit jewel might be set in gold; and the glory that is due the author certain scoundrels had claimed for themselves with impunity.”

In these words he gives the reasons for the necessity of printing for the first time a work, which its own author had never deemed it necessary to print. Of course, we would not consider it cause for blame for the student to adapt the doctrine of his master to suit himself, provided he does not attribute the adaptation to his master, but it is a pity that Boyer did not give more definite information and mention the names of the culprits guilty of the crimes he charged. This would have been extremely interesting and useful in showing the great influence of Victoria and would have made possible a more detailed critique of Boyer’s methods.

The value to be attached to Boyer’s edition may be deduced from the following facts. Boyer was a contemporary of Victoria and was personally acquainted with him. We would have supposed this, even if he had not said it himself,² from the fact that he was librarian at Salamanca. Consequently, he had first-hand knowledge of Victoria’s doctrine. His text was carefully prepared from the manuscript copies of Victoria’s auditors, men who wrote down Victoria’s lectures as he dictated them. In fact, he feels so sure of the accuracy of his edition that he believes those who have heard Victoria’s lectures will vouch for it and he even invites comparison of his edition with the manuscripts. For the convenience of the reader, Boyer prefixes a summary to each *relectio* and adds marginal references to some of the passages of Holy Scripture quoted by Victoria.³

On the other hand, the text of Boyer is not altogether free from mistakes and has so many misprints that it altogether merits the condemnation heaped upon it by Muñoz and every writer since. These errors are numerous and of many kinds. I shall not give here examples of misprints, because they are so numerous and can easily be noticed by the casual reader. I have grouped a few examples, chosen at random, of other errors under several headings.

Substitutions.—B⁴ has *etiam si* for *et sic*, p. 221, n. 11; *Ieroboam* for *Ierusalem*, p. 255, n. 1; *exportantes* for *importantes*, p. 258, n. 14; *duabus* for

¹*Extrait du Privilège du Roy*, first edition of the *Relectiones*, p. 3.

²“*Cuius ego memoria maxime recreor*,” says BOYER, *Epist. ad Valdesium*, prefixed to his edition.

³*Loc. cit.*

⁴B = BOYER’s edition.

ducibus, p. 278, n. 1; *proprios* for *publicos*, p. 278, n. 9; *iudicandum* for *indicendum*, p. 285, n. 2; *tutat* for *vertat*, p. 285, n. 12.

Omissions.—B has omitted the words in brackets in the following: *barbari non [habebant dominium, quia semper] erant in peccato mortali*, p. 244, n. 13; *omnes rescinduntur a fisco [et bona capiuntur ab eodem fisco]*, p. 228, n. 1; *ad vindicandum [iniuriam]*, p. 279, n. 6; *[non] maiorem auctoritatem habet princeps*, p. 279, n. 7.

Misreading of abbreviations.—B has *tum* for *tamen*, p. 225, n. 10; *tam* for *tamen*, p. 253, n. 20; *quod* for *qui*, p. 225, n. 16; p. 231, n. 8; p. 238, n. 4; p. 239, n. 4; *primum* for *praeterea*, p. 237, n. 10; p. 241, n. 5; p. 253, n. 3; *quin* for *quoniam*, p. 246, n. 8; *constituitur*, *vocat* for *constituit*, *vocatur*, p. 257, n. 3; *autem* for *etiam*, p. 272, n. 9; *nota* for *notandum*, p. 272, n. 8; *quazæque* for *quæ quæstio*, p. 278, n. 4; *sic* for *sicut*, p. 286, n. 5, and elsewhere; *Mediolanenses* for *Mediolani*, p. 287, n. 6; *pugnat* for *pugnant*, p. 288, n. 8; *qui* for *quæ*, p. 295, n. 16; *prosequi* for *persequi*, p. 264, n. 5.

There is some evidence that the copy was read to the compositor and that the proof-reading was faulty. For example, B has *magnoperepretium* (= *magnum operæ pretium*), p. 222, n. 4; *inciviliter* (= *vincibiliter*), p. 281, n. 10; *victores* (= *lictores*), p. 282, n. 5; *iusticia*, p. 285; *iuvetur* (= *iubetur*), p. 285, n. 8.

SECOND EDITION.

It is no wonder, then, that, although Boyer had a ten-year copyright,¹ a second edition was published by Alonso Muñoz, O. P., and printed by Juan de Canova at Salamanca in 1565. He also secured a ten-year copyright, as is clear from the letter in the vernacular which is prefixed to his edition. This letter is followed by a dedicatory letter of Muñoz to the "Serenissimo atque Augustissimo Hispaniarum Principe Carolo Philippo regis earundem filio," which is very complimentary to Victoria.

In his letter to the reader, Muñoz explains how he came to publish a second edition of Victoria's *Relectiones*. He was at Salamanca helping Domingo Soto with the correction of proof of the fourth book of the *Sentences*, then in press, when

"there appeared a little book with a most imposing title, but containing countless horrible misprints, absurdities which were disgraceful and insulting to the author as well as the whole theological school. It made one aghast to behold in the tiny body of so small a book so unbelievable an offscouring of close-packed blunders, and ashamed and sorrowful that rascals should seem to have such license towards the masterpieces of most distinguished men, and with impunity, too. This was the title of the book: 'The *Relectiones* of the Reverend Father, Brother Franciscus de Victoria, of the Order of Preachers, late Primary Professor of Sacred Theology in the University of Salamanca.' You observe how fair and full of promise the inscription is; and indeed in Pliny's words, its bail could be forfeited."²

Having found numerous and serious mistakes, Muñoz brought the matter to the attention of Domingo Soto and Melchior Cano, two of Victoria's former students, who prompted him to correct the printed book

¹*Extrait du Privilège du Roy*, first edition of the *Relectiones*, p. 3.

²See page 106.

"according to the most exact copies."¹ Later on the administer of the Holy Inquisition in the matter of examining books joined Domingo Soto in urging Muñoz to undertake the work.

"Although I was aware," says Muñoz, "how unpleasant a business it was, how hard and wearisome the affair, how inglorious the labor of correcting and restoring the monuments of others, especially those so ulcerous, so altogether deranged, so piteously (I had almost said) and hostilely regarded, as these were, yet, moved by the authority of my preceptors as well as induced by love of a very fine work and of its author, Victoria, who was also my dearest of teachers, I put my shoulders under a burden which I have loved."²

In preparing his text, Muñoz pursued the following plan.³ He persuaded a fellow-religious, one Petrus ab Añaya, to read aloud the text of Boyer, while he himself ran over in his mind simultaneously the manuscript copies. When any discrepancy occurred, they halted and supplied what was wanting or corrected what was wrong. Doubtful matters were settled by consulting many manuscripts, for there was an abundance of them, and when these failed, by having recourse to the sources used by the author. All of this was done a second time and a third time, so that the editor finally gives the work to the reader with great confidence.

But the criticism which Muñoz so vigorously directs against Boyer's edition can very justly be applied to his own. While Muñoz has corrected many mistakes of the first edition, he has not corrected all of them, and, moreover, falls into errors of his own.

The copy which Muñoz sent to the printer, as he himself states, was Boyer's edition corrected from the manuscripts by reading aloud. One would suppose that this method of preparing copy would cause errors, and it may be due to this that certain mistakes in **B** have remained uncorrected in **M**.⁴ At any rate, there are errors in **M** which seem to indicate that the copy was read to the compositor.⁵ For instance, **M** has *erant* for *errant*, p. 231, n. 13; *aversetur* for *adversetur*, p. 259, n. 7; *deincipes* for *principes*, p. 263, n. 11; *diligendo* for *dirigendo*, p. 263, n. 15; *cedes* for *cædes*, p. 279, l. 25; *pænes* for *penes*, p. 281, n. 2; *pæna* for *pæna*, p. 296, l. 25.

Another source of error was the correction of **B** according to the authors quoted or cited by Victoria. For example, in a quotation from Sylvester, **M** has changed *pugnat*, which is found in **B**, to *pugnavit* (p. 294, n. 9)—a change which seems to have been made to conform to Sylvester's words. But first of all, the principle underlying this procedure is false, because it is by no means evident that Victoria quoted authorities *ad litteram*. In fact, he often adapts a quotation, using only some of the exact words. For example, in a quotation from the *Institutes* of Justinian, Victoria deliberately substitutes *gentes* for *homines* (p. 257, n. 4). Similar adaptations, perhaps more striking to the casual observer, are to be found in quotations

¹*Ad verissima exemplaria.*

²See page 106.

³The information that follows is found in the same letter of Muñoz, but this part is not quoted in SIMON's edition.

⁴See below, p. 197. **M** = Muñoz's edition.

⁵Cf. above, p. 195.

from Gerson (p. 246, n. 7), from the Vulgate (p. 260, n. 6), and elsewhere. Moreover, in cases in which he should, Muñoz does not always act according to the principle which he enunciates. For example, he omits *mortalium* (p. 277, n. 5), which is found in **B** as well as in the passage quoted from St. Augustine.

In spite of Muñoz's boasted carefulness in correcting the errors of **B**, many of these errors remain uncorrected or have been miscorrected. To this class belong the following: *magnum operepetium* (= *magnum operae pretium*), p. 222, n. 4; *viri* (= *veri*), p. 222, n. 5; *quum* (= *quoniam*), p. 246, n. 8; *artes* (= *arces*), p. 260, n. 10; *erant* (= *errant*), p. 267, n. 8; *ipse* (= *ipsae*), p. 267, n. 9; *hac disputatione* (= *hanc disputationem*), p. 271, n. 9; *sciri: iure videtur* (= *sciri de iure, videtur*), p. 284, n. 3; *non dum*, p. 286; *indiferenter*, p. 289; *dificultas*, p. 291. Of course, many of these uncorrected errors are purely printer's errors, and might easily have passed unnoticed when read aloud, but I mention them here to show what value is to be attached to Muñoz's vaunted triple comparison. Besides, **M** has also not a few misprints which are its own, yet it is unnecessary to give them in detail here.

One of the most striking differences between **B** and **M**, however, is to be found in the substitutions, omissions, and additions made by Muñoz. These may have been made for several reasons.

First, Muñoz may have seen some manuscripts which Boyer did not see; but, since it is more likely that Boyer saw some which Muñoz did not see, seeing that he published his edition nearly ten years nearer the time at which the *Relectiones* were delivered, we can not argue with any certainty from this reason.

Secondly, Muñoz, in order to avoid a fancied ambiguity, may have deliberately made additions at the suggestion of the administer of the Holy Inquisition, who had suggested the work to Muñoz and had probably had some share in directing it. For example, **M** adds *in re dubia*, p. 284, n. 13; *moraliter loquendo*, p. 286, n. 1. Additions of this kind could have been made with a good conscience, seeing that Muñoz and his assistant were familiar with Victoria's opinions and realized the possibility of omissions of unimportant words on the part of students writing from dictation.

Thirdly, it is not at all unlikely that Muñoz and his collaborator, being members of the same Order as the author, desired nothing to be published under his name that in their opinion seemed illogical, incomplete or inelegant or likely in any other way to cast reflection upon the author. They knew that Victoria never intended his lectures for publication and that, if he had, he would have polished up his language before publication. They also knew that one can speak more quickly than one can write, and consequently, that Victoria's auditors were not apt to be able to write down every word dictated by their lecturer. A principle of this character might account for such changes as the following: *Christiano digna* (**B** has simply *Christiana*), p. 219, n. 6; *rex et dominus* (**B** has *rex vivus*), p. 245, n. 5; *super hoc* (**B** has simply *hoc*), p. 265, n. 14; *non esset respublica perfecta* (**B** has *non videtur habere Rempublicam perfectam*), p. 277, n. 13; *ita gladio uti* (**B** has *ira gladii*

uti), p. 279, n. 10; *præciperet* (B has *præceperit*), p. 279, n. 11; *parandam* (B has *pariendam*), p. 280, n. 5; *profligatis* (B has *profugatis*), p. 281, n. 7; *oriuntur* (B has *supersunt*), p. 281, n. 9; *per accidens* (B has *Christianis*), p. 287, n. 2. There is no doubt that the readings adopted by M in some of these passages are much more logical and much more Ciceronian than those of B.

Fourthly, certain changes which M made, perhaps following some of the manuscripts, may have been caused by the method, used by Victoria, of dictating his lectures. Every professor, lecturing to a class, often stops to render the same thought in other words, not intending the repetition to be a part of his formal lecture, but merely explaining something in other words while his auditors are writing down what he has said first. It may well have happened that some of Victoria's students wrote down repetitions of this sort, not thinking that they might not have been part of the dictation, while others wrote down parts of repeated expressions, and still others, the slow ones, missed a word here and there, perhaps even a sentence. Such may have been the case with the following: p. 223, n. 13; p. 224, n. 9; p. 224, n. 15; p. 229, n. 1; p. 265, n. 13; p. 267, n. 16; p. 271, n. 5; p. 277, n. 13; p. 285, n. 5; p. 289, n. 1; p. 295, n. 3. It would require too much space to give each of these examples in detail here.

Lastly, it must be remembered that, from their very nature,¹ Victoria's *Relectiones* were delivered twice: first, during the ordinary course of the year, and secondly, at the end of the year in public. Consequently, where difference in verbiage exists between the reading of B and the reading of M, it may be attributable to this source.

THIRD EDITION.

Fifteen years after the appearance of the Salamanca edition there appeared at Ingolstadt² another edition (1580) which Hurter terms good³ and which all the later editions follow. Nothing is known of the editor of this edition other than that he was "one of the Doctors of Sacred Theology in Ingolstadt." In his letter "to the Christian reader," he tells us that there are three points which he wishes to emphasize: (1) the amount of labor and toil expended by him in preparing the edition, (2) the character and greatness of the author of the *Relectiones*, and (3) the advantage and profit which the perusal of them will bring "even to Germans, who seem to be somewhat strange to the gymnastic and scholastic form of discussion therein employed."

In connection with the first point, the editor quotes parts of the letter, which Muñoz had prefixed to his edition, and then continues:

¹See above, p. 193.

²I have not seen a copy of this edition. The information I have given concerning it has been drawn from a letter which Simon prefixes to his edition and which purports to be a copy of the one prefixed to the Ingolstadt edition.

³HUGO HURTER, *Nomenclator literarius theologiae Catholicae*, vol. II³ (Innsbruck, 1906), p. 1369.

"But I do not know by what ill-chance it has happened that into this Salamanca edition, so clean, so clear, so gilded, have crept blunders and faults neither few nor trivial. It labors at times under the same faults as the Lyons edition; sometimes under faults of its own, which needs must be corrected either by reference to the Lyons edition or in some other way."¹

It has already been shown that this criticism of **M** was justified. It remains now to give a brief description of his own method.

The text of the Ingolstadt edition was prepared in the following manner. The editor and his associate made a careful comparison (probably, by reading aloud) of **B** and **M**, making corrections in a copy of **B**, which was to be sent to the printer, from a copy of **M**, wherever this was not evidently at fault. When a trivial mistake was found in **M**, the editor relied on his own judgment, but whenever a serious error was found in **M**, he consulted skilled theologians and philosophers, in order that by weighing all the words and opinions of the author found in both editions he might understand the mind of the author from the common judgment of many. Sometimes, even after following this plan, he could discover no method of restoring a corrupt passage.²

From the above, it is clear that the editor of the Ingolstadt edition had at his command the same materials as I have used, namely, **B** and **M**, and it is true that he has made some good emendations (for example, *gerit vices et auctoritatem*, p. 277, n. 6, where **B** has both nouns in the plural and **M** has both in the singular; *sciri de iure, videtur*, p. 284, n. 3, where **B** and **M** have *sciri: iure videtur*). Nevertheless, his text contains the self-same kinds of errors with which he chides the editors of **B** and **M**, as the footnotes to the revised text and the long list of Errata will amply show, if we may believe that Simon's edition (Cologne, 1696)³ is a faithful copy of the Ingolstadt edition. It is natural to expect that **S** will have errors peculiar to itself. For instance, *pellum* (= *bellum*) and *Amprosio* seem to indicate that the copy was read to the compositor by a German reader. Yet, on the whole, it is not likely that Simon would intentionally reject readings he found in the Ingolstadt edition for something incorrect.

OTHER EDITIONS.

The other editions of the *Relectiones* that followed the Ingolstadt edition are professedly based upon it and therefore need not enter into this discussion. In this number are included the editions of Lyons (1586 and 1587), Antwerp (1604), Venice (1626), Salamanca (1680), Cologne and Frankfort (1696), and Madrid (1765).

PRESENT EDITION.

It has been shown that **B** was edited from unknown manuscripts (written by Victoria's auditors), some of which were seen by the editor of **M** and some of which may not have been seen by the editor of **M**; that **M** was edited from **B** and from unknown manuscripts, some of which may

¹See above, pp. 106-107.

²See above, p. 107.

³**S** = SIMON's edition; **I** = Ingolstadt edition.

not have been seen by the editor of **B**; that **I** was edited from **B** and **M** without manuscripts; and that all subsequent editions were edited from **I**. Consequently, since no manuscripts were available in the preparation of the present text, it was necessary to have recourse to the first and second editions, whose editors had used manuscripts in establishing their texts.

For this reason a careful collation was made of **B**,¹ **M**,² and **S**,³ the latter being used as a late representative of the text. Upon a typewritten copy of **S**, the variant readings of **B** and **M** were indicated interlinearly in inks of different colors. The footnotes to the text explain these textual differences, and notwithstanding the presence in this edition of the photographic reproduction of **S**, the variants of **S** have generally been given for the purpose of showing where **S** has made mistakes or proper corrections. Accordingly, unless otherwise stated in the footnotes, the text which follows is the text which appears in **B** and **M**, and substantially in **S**. It is true that many of the footnotes are not necessary in themselves, but they have been retained for reference from some other footnote or to show in general how the different editors have handled the text.

The wording of the footnotes has been made as brief as is consistent with clarity of expression, yet the footnotes themselves differ from those usually employed in critical texts (e. g., the Teubner series or the Oxford series) in that they are somewhat fuller, make explanatory statements, and have corresponding index figures in the text itself. This variance from customary procedure was deemed advisable because of the primary object in including a revised text in the present edition. For this reason also the body of the text in the footnotes is in English instead of Latin and the usual style of type has been reversed by using italics for variant readings and Roman for remarks concerning variants.

The revised text presented herewith falls into three parts: (1) the argument of the author; (2) additions made by editors; and (3) quotations and citations made by the author from the Bible, Canon Law, Civil Law, and other authorities.

With regard to the author's argument, this has been retained in the text throughout, even when a mistake is evident, provided it is probable that the mistake was Victoria's and not that of his auditors or editors (e. g., p. 249, n. 8). Because of the repetitions made by the lecturer and the omissions made by the auditors,⁴ it is impossible sometimes to secure with any surety the words uttered by Victoria. In such cases, the readings preferred by the editor of this revised text have been retained in the text and the others have been recorded in the footnotes with any necessary explanation. The orthography, however, has been changed to conform with modern usage. For this purpose, Bennett's *The Latin Language*

¹A copy of **B** is to be found in the Woodstock College Library, Woodstock, Md.

²A copy of **M** is to be found in the Bouquillon Library of the Catholic University of America, Washington, D. C.

³A copy of **S** is to be found in the Library of Congress, Washington, D. C., and a photographic reproduction of it is included in this edition.

⁴See above, p. 198.

(Boston, Allyn & Bacon, 1907) has been followed, as having in the most convenient form in English the material covered by Brambach's *Hilfsbüchlein für Lateinische Rechtschreibung* and *Die Neugestaltung der Lateinischen Orthographie in ihrem Verhältniss zur Schule*. Yet *i* has been retained for *i* (cons.) and *V* for capital *u* (vocal.). Wherever the spelling of a word is not explicitly found in *The Latin Language* (§§ 57-61), Harper's *A New Latin Dictionary* (New York, 1895) has been followed; and wherever two forms are allowable, the one found in Victoria's text has been retained.

With regard to additions to Victoria's text made by Boyer and Muñoz and their associates, very little can be established with certainty. Occasionally footnotes have been added suggesting the probability of certain phrases having been added or omitted by the one or the other. However, it is fairly certain that the titles of the individual *relectiones* were not given by Victoria himself.¹ Moreover, the summaries which precede the text were supplied by Boyer, as he himself states,² and the wording of these was changed to a considerable extent by Muñoz and the unknown editor of the Ingolstadt edition. Since this was not the work of Victoria, it could have been omitted from the present text or at least relegated to footnotes. The former would have been unwarrantable so far as the history of the text is concerned; the latter would have been inconvenient and undesirable for the present purpose. Consequently the summaries have been retained as a part of the text.³ Boyer also added marginal references to some of the citations from the Bible. This was supplemented by Muñoz and further supplemented by the editor of I or a subsequent edition, to the extent of following the argument *proof by proof*. All of these references have been retained unless manifestly incorrect. However, the orthography has been changed to conform with modern usage.⁴

With regard to quotations made by Victoria, every instance has been verified, where possible, in the original text of the authority quoted. Wherever there is a well-recognized critical edition, the verification has been made according to it, and notes have been added to show differences between the text of the authority quoted and the text of the quotation. Some of these differences may be accounted for from the fact that Victoria probably used a different edition from the one used for verification. For instance, quotations from the Bible were verified by Fillion's edition of the Clementine revision of the Vulgate, whereas this revision was made after the Council of Trent many years after Victoria's death. Moreover, wherever no well-recognized critical edition is available, verification has been made according to an edition ante-dating Victoria, if possible, though in some cases I considered myself fortunate in having access to any edition whatsoever. The orthography of the quotations has been changed to conform with that used by the authority quoted, but the exact words themselves have not been made to so conform.

The exact words of the authority quoted have been given in full in the footnotes. In some cases, this was very desirable, because of the inac-

¹See above, p. 191.

²See above, p. 194.

³E. g., see below, p. 217, n. 3.

⁴See above, p. 200.

cessibility of the work quoted and the frequent use of abbreviations in the original; in other cases, it was desirable merely for purposes of comparison, to show how accurately Victoria used his sources. Consequently, when Victoria quotes someone's opinion, it is precisely as he gives it, unless otherwise stated in the footnotes. Citations have also been verified in the same way, although at times this was extremely difficult, owing to the fact that Victoria sometimes merely mentions the author's name. For instance, he makes no exact reference to the *Summa* of Agostino Trionfi, a work which is printed in small type with no indention of paragraphs and no index. In some cases, because of their inaccessibility, it was impossible or impracticable for me to make any verification whatsoever. This was the case with the works of the following: Pope Adrian VI, Cardinal Pierre d'Ailly, Jacques Almain, Berosus of Babylon, Conrad of Megenberg (?), Guillaume Durand de Saint Pourçain (?), Richard Fitzralph of Armagh, Guido de Baysio, Guillaume d'Auvergne (?), Guillaume d'Auxerre, Henry of Ghent, Hervaeus Natalis, Ioannes de Ianduno, William Occam, Petrus Paludanus and Hugo Vercellensis (?).

In any case, references in the text below to the texts of the authorities quoted have been written in a uniform manner in parentheses and footnotes have been added in order to make the reference as exact as possible without adding anything to the text of Victoria. This statement will become clear from the following explanation of how four of five of the most frequently quoted authorities have been treated in this revised text.

The first of these is the Bible, which Victoria cited by naming the book with varying abbreviations and the number of the chapter. He did not name the number of the verse, because the division into verses was not made by Stephanus until 1545, thirteen years after Victoria delivered the two lectures concerned and probably did not obtain current use for many years thereafter. It would be interesting to find out exactly which edition of the Vulgate Victoria used and knew best, but, aside from mentioning wherein Victoria's quotations differ from the Clementine revision now in general use, it has not been thought worth while to go into the question further. In the text below, the title of the book has been uniformly abbreviated by using the first syllable and the first letter of the second syllable; the chapter has been indicated by its number simply. For example, "*Deut.*, 17," means Chapter 17 of *Deuteronomy*. The number of the verse and, when not given in the text, the number of the chapter also, are given in the footnotes together with the exact words of the Vulgate, when these differ from those given by Victoria. These differences are to be accounted for partly from the fact that Victoria occasionally quotes from memory or consciously adapts a quotation and partly from the fact that Victoria used an early edition of the Vulgate, perhaps one of the Stephanus editions (e. g., see p. 220, n. 5). The orthography of the exact words of the Vulgate has not been changed except in the use of *i* to represent *ī* (cons.).

As would be expected in a work of this character, the second most frequently quoted authority is the *Corpus Iuris Canonici*. Victoria quotes this work in the manner usually employed by writers of the fifteenth and

sixteenth centuries. Part I of the *Decretum Gratiani* is referred to by *distinctio* and *canon* and Part II is referred to by the number of the *causa*, by *quaestio* and by the opening words of the *canon*, thus, "1 *distin.*, c. *ius gentium*," and "23, q. 1, *quid culpatur*." In the present text, the varying abbreviations have been uniformly written, thus, "Dist. 1, can. *ius gentium*," and "23, qu. 1, can. *quid culpatur*," while in the footnotes the references are given in the present method of citing the *Decretum* and a statement is added containing the name of the author and the work from which the *canon* has been drawn, thus, "*Decr.*, 1, 1, 9, which is an excerpt from St. Isidore of Seville, *Etymologiae*, lib. 5, cap. 6," and "*Decr.*, 2, 23, 1, 4, which is an excerpt from St. Augustine, *Contra Faustum Manichaeum*, lib. 22, cap. 75." The *Decretales Gregorii Papae IX* are referred to by *titulus* and *caput* and the *Liber Sextus Decretalium D. Bonifacii Papae VIII* by *titulus* and *caput* with "lib. 6" or "lib. vi" added. These, likewise, have been treated in the manner described above. When the quotation differs from the passage quoted, as given in Friedberg's edition of the *Corpus*, the footnotes will show wherein they differ. Here, again the differences are attributable partly to the fact that Victoria occasionally quotes from memory or consciously adapts a quotation and partly to the fact that Victoria used an early edition of the *Corpus*.

The mode of citing the *Corpus Iuris Civilis* follows, to a great extent, the method of citing the *Corpus Iuris Canonici*. The varying abbreviations here likewise have been uniformly written in the text and footnotes have been added using the present method of citing the individual parts of the *Corpus*: the *Institutiones*, the *Digesta*, and the *Codex*; the other parts of the *Corpus* do not figure in the present work. When there is a difference between the quotation and the passage quoted, as given in Krueger and Mommsen's edition of the *Corpus*, the footnotes will show wherein they differ.

References to Aristotle are made by the number of the *liber* and the title of the work, thus, "tertio *Ethicorum*," i. e., Book 3 of the *Ethics*. Abbreviations of this have been extended and uniformly written as in the example given. The *Sentences* of Peter Lombard are similarly referred to, thus, "Quarto *Sententiarum*," i. e., Book 4 of the *Sentences*, but here the number of the book forms a part of the title, since the work itself is not quoted, but commentaries upon it.

References to the *Summa theologiae* of St. Thomas Aquinas are made by using the number of the part as title, thus, "*Prima Parte*," "*Secunda Secundae*," further reference giving the *quaestio* and *articulus* and sometimes the answer to objections, thus, "qu. 10, art. 12, *ad secundum*."

References to other works and other authors should cause no particular difficulty. Every effort has been made to make the footnotes which explain these as accurate and as clear as possible. In this connection, the use of the words "p. so-and-so of the edition used" means, of course, the edition used by me for verification.

A few words with regard to certain characteristics of the three editions I have been able to consult may be worth while. All diphthongs are liga-

tured in **B**, **M**, and **S**. A tilde placed over a vowel denotes the omission of an *n* or *m* in **B**, **M**, and **S**. Initial *u* is written *v* and interior *v* is written *u* in **M**. The enclitic *-que* is frequently written *q*; in **B** and **M**, less frequently in **S**. The words *et*, *qui*, *quia*, and *quod*, are written in the usual abbreviated forms in **B** and **M**. This may account for the omission of these words occasionally in one edition or another. Two words are joined together in **B** as if they were considered as one word: *revera*, *ad hoc*, *e contra*, *siqua*, *nos ipsos*, each of which occurs two or more times. Some spellings peculiar to the time are *author*, *authoritas*, etc. (**B** and **M**), *autor*, *autoritas*, etc. (**S**); *imo* (**B**, **M**, and **S**); *quatuor* (**B**, **M**, and **S**); *charitas*, *charissimi* (**B**, **M**, and **S**); *caussa* (**S**); *fœmina* (**B**, **M**, and **S**); *cæteri* (**B**, **M**, and **S**); *prælii* (**B**, **M**, and **S**); *fœlicitas* (**M**); and *pœnitere* (**B**, **M**, and **S**). Although this orthography has been changed to conform with modern usage, nothing has been done in the way of conforming the syntax.

In this connection, there are several peculiarities of syntax that are worth mentioning. The extension of *quod* to *verba declarandi et sentiendi* to express object sentences, which is unusual in classical Latin,¹ is found quite frequently in Victoria's text, e. g., *videtur quod*, etc., and *notandum quod*, etc. This *quod* is usually repeated, when a subordinate clause intervenes between it and the rest of its clause. For instance, *putant quod, si ponamus ignorantiam invincibilem de baptismo aut fide Christi, quod statim consequitur quod possit aliquis salvari sine baptismo aut fide Christi*, p. 250, § 9; *videtur sequi quod, si cessarent omnes isti tituli, . . . quod cessaret tota illa peregrinatio et commercium*, p. 268, § 18; *videtur quod, si unus velit componere et dividere vel compensare pro parte, quod alter tenetur recipere condicionem*, p. 284, § 28; *Non enim est intellegendum quod, si Galli exciderint unum pagum aut ignobile oppidum Hispaniae, quod liceat Hispanis (etiam si possint) praedari totam Galliam, sed pro modo et qualitate iniuriæ arbitrio boni viri*, p. 294, § 51; *Et intolerabile esset quod, si Galli agerent praedas in pecora Hispanorum vel incenderent pagum unum, quod liceret occupare totum Regnum Francorum*, p. 295, § 56. In many instances, **M** and later editions omit one *quod* or the other, perhaps unintentionally, because the abbreviation of *quod* could very easily be overlooked.

This sort of repetition is natural and is to be expected in lectures or any form of oral discourse, where subordinate clauses are apt to intervene. Consequently, other words are similarly repeated. For example, *ergo* in the following: *Cum ergo omnes illi sint non solum in peccatis, sed extra statum salutis, ergo ad Christianos spectat corrigere et dirigere eos*, p. 262, § 9; *Si ergo hoc ita expedit, ergo spectat ad auctoritatem et potestatem summi Pontificis*, p. 262, § 10; *Si ergo secundum leges humanas non licet in causa dubia spoliare legitimum possessorem, ergo merito potest obici principibus, "Patere legem, quam ipse tuleris; quod enim quisque iuris in alios statuit, ipse eodem iure uti debet,"* p. 284, § 28. *An* in the following: *Dubitari merito potest an, si plures huiusmodi Respublicae aut principes habeant unum com-*

¹See GILDERSLEEVE AND LODGE, *Latin Grammar* (New York, D. C. Heath & Co., 1894), § 525, p. 328, note 7.

munem dominum aut principem, an possint per se inferre bellum sine auctoritate superioris principis, p. 277, § 8; An, parta iam victoria et ubi periculum non est ab hostibus, an liceat interficere omnes, qui contra arma tulerunt, p. 291, § 45. Vtrum in the following: Vtrum qui ex ignorantia secutus est bellum iniustum, si postea constiterit ei de iniustitia belli, utrum teneatur restituere, sive loquamur de principe sive de subdito, p. 286, § 33. Quin¹ in the following: Sed nullus negat quin incestuosus et raptor et deferens arma Saracenis et non solvens vectigalia—quin maneat verus dominus bonorum suorum in foro conscientiae, p. 228, § 14. Quin instead of ut in the following: Vnde non videtur iniquam ut, si oppidum nihil cavendo dedatur, quin mandato principis aut iudicis aliqui, qui fuerunt notiores, occidantur, p. 293, § 49.

Another striking peculiarity is found in the use of correlatives. *Ita quod*, for example, is found where *ita ut* would be expected: *Haereticus ipso facto perdit dominium bonorum suorum, ita quod in foro conscientiae cadit a dominio, p. 226, § 9; Barbari non ad primum nuntium fidei Christianae tenetur credere, ita quod peccent mortaliter non credentes solum per hoc, etc., p. 250, § 10; Si cessarent omnes isti tituli, ita quod barbari nullam rationem iusti belli darent nec vellent habere Hispanos principes, etc., p. 268, § 18; Bona fide gerunt bellum, ita, inquam, bona fide, quod excusantur ab omni culpa, p. 297, § 59. Talis quod, where talis qualis or talis ut would be expected: Quando bellum est talis condicionis quod licet spoliare indifferenter omnes hostes et occupare omnia bona illorum, etiam licet ducere in captivitatem omnes hostes, p. 290, § 42.*

¹For the use of *quin* after negative verbs of Saying and Thinking, see GILDERSLEEVE AND LODGE, *op. cit.*, p. 357, § 555.2.

TEXTS USED TO VERIFY PASSAGES IN AUTHORS REFERRED TO BY VICTORIA.

[The word *colophon* in brackets means that the information given is derived chiefly from the colophon.]

- AMBROSE, ST. Opera. Pars Prima. (Rec. Carolus Schenkl). Vienna, Tempsky, 1897. (Corp. Script. Eccles. Lat.)
- ANTONINUS, ST. Summa Theologica, in Quattuor Partes Distributa. Pars Secunda. Verona, Augustinus Carattonius, 1740.
- ARISTOTLE. Ethica Nicomachea. (Ed.⁹ Susemihl-Apelt). Lipsiæ, Teubner, 1912.
- . Politica. (Ed. Susemihl-Immisch). Lipsiæ, Teubner, 1909.
- AUGUSTINE, ST. De Civitate Dei Libri XXII. (Rec. et comm. crit. instr. Emanuel Hoffman). Vienna, Tempsky, Vol. I, 1898, Vol. II, 1900. (Corp. Script. Eccles. Lat.)
- . De Diversis Quaestionibus LXXXIII Liber Unus. In Patrologiæ Cursus Completus (ed. Migne), Tomus XL. Paris, Migne, 1845, pp. 11-100.
- . Epistolæ. (Rec. et comm. crit. instr. Al Goldbacher). Vienna, Tempsky, Pars III, 1904, Pars IV, 1911. (Corp. Script. Eccles. Lat.)
- . Contra Faustum Manichæum Libri XXIII. In Patrologiæ Cursus Completus (ed. Migne), Tomus XLII. Paris, Migne, 1845, pp. 207-518.
- . Contra Litteras Petiliani Libri Tres. (Rec. M. Petschenig). Vienna, Tempsky, 1909. (Corp. Script. Eccles. Lat.)
- . Quaestionum in Heptateuchum Libri VII. (Rec. Ios. Zycha). Vienna, Tempsky, 1895. (Corp. Script. Eccles. Lat.)
- . Contra Secundinum Liber. (Rec. Iosephus Zycha). Vienna, Tempsky, 1892. (Corp. Script. Eccles. Lat.)
- BAPTISTA TROVAMALA DE SALIS or DE ROSELLIS. Summa casuum conscientiæ utilissima per venerandum patrem fratrem Baptistam de Salis . . . noviter compilata, quæ Baptistiniana nuncupatur . . . expletum est in Nuremberg imperiali civitate partis Germaniæ per Antonium Koberger inibi concivem, 1488. [Colophon.]
- BARTOLUS. Omnium Iuris Interpretum Antesignani Commentaria. . . . Tomus Sextus. . . . Venetiis, 1590.
- BIBLIA SACRA, juxta Vulgatæ exemplaria et correctoria Romana denuo edidit . . . Aloisius Claudius Fillion. Parisiis, Letouzey et Ané, 1887.
- CAJETAN, CARDINAL. Look under THOMAS AQUINAS, ST.
- CARLETUS, ANGELUS, of Chiavasso. Summa Angelica de casibus conscientiæ per venerabilem fratrem Angelum de Clavasio compilata . . . maxima cum diligentia revisa, et fidei studio emendata . . . Nurenberge impressa per Anthonium Koberger inibi concivem. Aug. 28, 1488. [Colophon.]
- CICERO. De Officiis. (Ed. Miller.) Macmillian, 1913. (Loeb Classical Library.)
- CONSTANCE, COUNCIL OF. Acta et decreta generalis concilii Constant. diligenter elaborata et impressa in imperiali oppido Hagenow per industrium Henricum Gran inibi incolam. Expensis providi viri Johannis Rynman. April 11, 1500. [Colophon.]
- CORPUS IURIS CANONICI. (Ed.² Richter-Friedberg). Lipsiæ, Tauschnitz, Vol. I, 1879, Vol. II, 1881.
- CORPUS IURIS CIVILIS. Vol. I. (Ed.¹⁰ Krueger-Mommsen). Berolini, apud Weidmannos, 1905.
- DUNS SCOTUS, IOANNES. Opus praeclarissimum in quartum sententiarum . . . castigatum per venerabilem Thomam Panchet anglicum. . . . Impressione, ductu et impensis Anthonii Koburger Nurenberge fideliter exaratum. May 19, 1481. [Colophon.]
- EYMERICI, NICOLAUS. Directorium Inquisitorum F. Nicolai Eymerici Ordinis Prædicatorum. Cum commentariis Francisci Peniæ . . . iterum emendatum, auctum et . . . locupletatum. Venetiis, Apud Marcum Antonium Zalterium, 1595.
- DE GERSON, JEAN CHARLIER. Opera omnia, . . . in V tomos distributa; . . . Quibus accessere . . . Petri de Alliaco, . . . ac insuper Jacobi Almaini . . . Tractatus, partim editi partim inediti; . . . Opera et studio M. Lud. Ellies du Pin, . . . Antwerpæ, Sumptibus Societatis, 1706.
- HESIOD. Carmina. (Recensuit Aloisius Rzach). Ed. altera. Accedit certamen quod dicitur Homeri et Hesiodi. Lipsiæ, Teubner, 1908.
- HORACE. Epistolæ. In Carmina. (Ed. Vollmer). Lipsiæ, Teubner, 1912.
- HUGO DE S. VICTORE. Opera. (Ed. Thomas Garzon de Bagnacaballo). Moguntiae, pub. by Antonius Hierat, printed by Ioannes Volmar, 1617, 3 vols.

- NETTER, THOMAS, of Walden. *Thomae Waldensis Anglici Carmelitæ, Theologi Præstantissimi, Doctrinale Antiquitatum Fidei Ecclesiæ Catholicæ*. . . . nunc Reverendissimi P. Ioan. Baptistæ Rubei, Ravennatis, . . . nutu et favore excusum. . . . Tomus Primus. Venetiis, Apud Iordanum Zilettum, 1571.
- SALLUST. *De Catilinæ Coniuratione*. (Ed.⁴ R. Dietsch). Lipsiæ, Teubner, 1874.
- SYLVESTER. *Summa Sylvestrina, quæ Summa Summarum merito nuncupatur*. (Ed. Petrus Vendramenus). Venetiis, apud Hieronymum et Nicolaum Polum, 1601.
- DE' TEDESCHI, NICOLÒ. *Nicolai Tudeschii Catinensis Siculi, Panormi Archiepiscopi, vulgo Abbatis Panormitani, Commentaria Primæ Partis in Secundum Librum Decretalium*. . . . Tomus Tertius, and in Quartum et Quintum Librum Decretalium. . . . Tomus Septimus. Venetiis 1588, Apud Iuntas.
- TERENCE. *Eunuchus*. In *Opera*. Vol. I. (Ed. R. Klotz). Leipzig, Schwickert, 1838.
- TERTULLIAN. *De corona*. In *Patrologiæ Cursus Completus* (ed. Migne), Tomus II. Paris, Migne, 1845, pp. 74-102.
- THOMAS AQUINAS, St. *Opera omnia, iussu impensaque Leonis XIII P. M. edita. Summa Theologiæ*. . . . Romæ, ex Typographia Polyglotta, S. C. de Propaganda Fide, vols. V-XII (1889-1906). This also contains the Commentaries of Cardinal CAJETAN.
- . *Summa contra Gentiles, seu de Veritate Catholicæ Fidei*. Ed. nova et emendata. Augustæ Taurinorum, ex Typographia Pontificia et Archiepiscopali, Eq. Petri Marietti, 1886.
- . *Opera omnia*. (Ed. Fretté.) Parisiis, apud L. Vives, 1871-1880, 34 vols.
- TRIONFI, AGOSTINO, of Ancona. *Summa de Ecclesiastica potestate edita a fratre Augustino de Ancona*. . . . Impressa Venetiis arte et ingenio Joannis Leoviler de Hallis. Impensis Octauiani scoti Modoetienum. Sept. 19, 1487. [Colophon.]
- VERGIL. *Aeneidos Libri I-VI*. (Apparatu critico in artius contracto iterum recensuit Otto Ribbeck). Lipsiæ, B. G. Teubner, 1895.
- DE VICTORIA, FRANCISCUS. REVERENDI | Patris F. Frâncisci Victoriz or[di]. Præd. sacræ Theologiæ professoris eximij atq; | in Salmâticensi Academia quondam Chatedræ | primariæ moderatoris prælectorisq; incôparabilis Relectiones vndecim. Per R. P. præsentatum | F. Alfonso Muñoz eiusdê ordi. a prodigiosis innumerabilibusq; vitijs, quibus Boyeri, hoc est pri[m]a æditio, plena erat summa cura repurgatæ, atq; ad germana exemplaria in|tegritati ac sinceritati nativæ restitutæ. | Quarum seriem versa pagella indicabit. | (*Vignette*) | SALMANTICÆ, | Apud Ioannem a Canoua. | M. D. LXV. | CVM PRIVILEGIO.
- WYCLIFFE, JOHN. *Tractatus de Civili Dominio Liber Primus*. (Now first edited from the unique manuscript at Vienna by Reginald L. Poole, M. A.). London, published for the Wyclif Society by Trübner & Co., 1885.

SIGNS AND ABBREVIATIONS.

B = Boyer's edition.
M = Muñoz's edition.

I = Ingolstadt edition.
S = Simon's edition.

Arg. = Argumentum, etc.
can. = canon, etc.
cap. = caput, etc.
Coroll. = Corollarium, etc.
fin. = finalis, etc.
gloss. = glossa, glossator, etc.

h.e. = hoc est.
i.e. = id est.
lib. = liber, etc.
Prob. = Probatio, probatur, etc.
Prop. = Propositio, etc.
Resp. = Responsum, Responsio, etc.

NOTE.—The black figures in the inside margin of pages 217-297 indicate the corresponding pages of the Photographic Reproduction included in this edition. The pages of the Photographic Reproduction corresponding to pages 209-216 are unnumbered in the original.

CARMEN IN LAVDEM OPERIS AD LECTOREM INCERTO AVCTORE.

Continet exiguus liber hic quam plurima, lector,
Leges, Pontifices theologosque sacros.

ALIUD CARMEN EXTEMPORANEVM
MATERIAM VTRIVSQVE TOMI QVAM BREVISSIME COMPREHENDENS.

Quid veneranda queat docet hic Ecclesia mater
Pontificesque liber; Patrum quae rite potestas
Concilio in magno; simul et civilia iura
Et quae sint belli (neque enim Mars legibus orbus);
Legitimumque torum atque hominum connubia tractat.
Haec Francisce tui Victoria prima laboris
Est pars et tanti stat adhuc quoque gratia facti.

Quis pietatis amor, quam sit pulcherrima virtus
Abstenuisse bonis et legem ponere luxus,
Quanta sed impietas, humano sanguine dextram
Polluere et vitam, quae nec reparabilis auro
Nec precibus, amissa semel, pretiove benigno,
Eripere! Heu, silicem gerat is sub pectore duram,
In sua qui diro grassatur viscera ferro.
Nec pretio pia praebendas Ecclesia vendit,
Sed gratis bene dat meritis animosque repellit
Degeneres, nec stet magicis res artibus ulla,
Artibus ex uno revocatis carcere abyssi.
His quoque, cum verum ventum est rationis ad usum,
Quid fieri deceat, supremo in limine libri
Edocet aeterna dignus Victoria vita.

Nec tua pertenuis tam magni gratia facti,
Et tenebris turpique situ qui promis edere
Tanti scripta viri, quod, si Deus adnuet ausis,
Aeternum vives, post funera debita vives,
Et Deus exemptam caelo de corpore mentem
Inferet aethereo divosque videberis inter;
Macte modo meritis nec duro parce labori.

NOTE.—The above is a revised text of two laudatory poems which Simon reproduces after the Preface of the edition of 1696. They probably appeared in the Ingolstadt edition (1580), which Simon professes to reproduce. The first also appears in the edition of Muñoz (1565) and it may be that Muñoz was its author.

QVIDAM EX INGOLSTADIANIS SS. THEOLOGIAE DOCTORIBVS
CHRISTIANO LECTORI SALVTEM.¹

Francisci Victoriae, theologi patrum memoria in florentissima Salmanticensium Academia longe doctissimi, Relectiones has tredecim, Christiane lector, cum hic Ingolstadii recudendae essent, corrigendas suscepi virorum doctorum suasu, qui tanti viri studio propter eius famae celebritatem vehementer incendebantur. In hoc autem negotio, quod mihi datum est, pauca haec esse video, quorum rationem tibi constare operae pretium sit: quantum operae et laboris in editione corrigenda et adornanda posuerim; qualis quantusque vir hic fuerit, qui harum Relectionum auctor est; quantum utilitatis et commodi harum Relectionum lectio allatura sit hominibus etiam Germanis, qui a gymnico illo et scholastico disputandi genere videntur nonnihil alieni.

Quantum autem laboris sit a nobis in hoc negotio susceptum, credere vix, lector, poteris, nisi vel hanc editionem nostram cum Lugdunensi et Salmanticensi studiose conferas vel qualis utraque harum fuerit, nobis referentibus, ratione aliqua cognoscas. Vsus enim eram primo sola Lugdunensi ad bonam prioris tomi partem repurgandam, ex qua folia quinque prima typographus excudendo iam absoluerat, quando praeter spem opinionemque meam Salmantinae editionis exemplum (non enim putabam in his locis exstare), quod multo emendatius videbatur, hoc modo sum nactus. Cum Reverendus Pater Gregorius Rosephius Augustanus Ecclesiastes huc ad nos excurrisset, laboremque molestissimum, quem in exemplari Lugdunensi corrigendo (videbar siquidem Augiae stabulum purgare) suscipiebam, locosque aliquot omnino depravatos a me indicatos cognovisset, effecit gratia et intercessione sua, uti vir generosus Dominus Marcus Fuggerus, pro eo quo tenetur publici commodi desiderio, ex celeberrima illa familiae suae bibliotheca Salmantinum exemplar nobis utendum daret. Quam autem mendosum et corruptum Lugdunense fuerit exemplar, ex Epistula Fratris Alphonsi Mugnosii ad Lectorem, quam in initio Salmantini exempli posuit, malo quam ex me, lector, intellegas. Cuius Epistulae, quia laudes auctoris etiam in ea continentur et discipuli eius doctissimi aliquot nominatim recensentur, partem aliquam huic interserere visum est.

“Cum Salmanticae agerem, auxiliaremque nauarem operam fratri Dominico Soto in emaculanda impressione quarti Sententiarum, qui tunc excudebatur (Candide Lector), libellus quidam prodiit speciosissimo titulo, innumerabiles portentosasque mendas, deliramenta pudenda, atque contumeliosa auctori tum etiam toti theologorum scholæ continens. Stupori erat in tantillo libelli corpusculo tam incredibile vitiorum congestam intueri colluiem, pudori atque dolori quod visebatur tantum licere nebulonibus in eximias clarissimorum virorum lucubrationes

¹This is a revised text of the Preface of the edition of 1696. It is given here as a matter of historical interest, although not essential for this publication.

idque impune. Titulus libri is erat 'Relectiones R. P. Fratris Francisci Victoriae ordinis prædicatorum Sacrae Theologiae in Salmanticensi academia quondam primarii professoris.' Vides inscriptionem pulcherrimam et vndecunque pollicitandam atque adeo propter quam, ut Plinius dixit, vadimonium deseri possit."

"Cum igitur hunc ipsum librum Salmanticæ offendissem recens e prælo prodeuntem, summa aviditate cœpi legere et vix dum (*sic*) conieceram oculos in pagellam, quæ prior sese obtulit, et ecce in oculos ipsos incurrit impius quidam error in materia Simonia, illeque mirum in modum stomachum mihi mouit. Sed nihil hoc moratus, cum res esset quæ a quovis vel mediocriter erudito deprehendi posset, pergo, et quo amplius procedebam, plures errores nonnullaque etiam truncata inueniebam. Cumque vidissem rem esse minime ferendam, detuli ipsam ad reuerendos admodum patres F. Dominicum Soto et F. Melchiorum Canum, qui mihi autores fuerunt huius prouinciæ assumendæ, nempe librum istum corrigendi ad verissima exemplaria."

"Resciuit hoc ipsum magister Franciscus Sanctius, Salmanticensis ecclesiæ Canonicus et in Salmantino item gymnasio cathedræ philosophiæ morales moderatoris¹ (*sic*), atque adeo administer sanctæ Inquisitionis in negotio examinandorum librorum, qui recipiendi sunt aut reiiciendi. Is ad fratrem Dominicum Soto venit de hoc ipso cum eo tractaturus, eiusdemque Francisci impulsu accersitus sum ac denuo ab ambobus ipsis Sparta mihi hæc iniuncta est exornanda.

"Et quamuis nossem, quam sit inamœnum negotium, quam dura ac morosa res, quam inglorius labor, corrigere aucte instaurare monumenta aliena, præsertim tam vlcerosa, tam turbata vndique, tam misere, pœnæ (*sic*) dixerim et hostiliter habita, vt hæc ipsa erant; tamen auctoritate præcipientium motus, tum etiam amore pulcherrimi operis et illustris auctoris eiusdemque charissimi mihi præceptoris mei Victoriae adductus, humeros amato oneri supposui."

In fine denique eiusdem Epistolæ hanc Mugnosius adicit clausulam:

"Frue igitur fœliciter¹ (*sic*) his, quæ tibi nostris vigiliis et laboribus parauimus, quibus factum est (absit verbo inuidia), vt pro luthulento antea opere, ne dicam luteo, tersum nitidumque habeas atque vndique aureum et splendidum, id quod facile experimento comperies, si quacunque liber apertus fuerit conferre volueris et perpendere, quid distet noster hic, quem tibi tradimus, ab illo, qui correctus est a nobis, quem videlicet Iacobus Boyer excussit Lugduni, Anno domini, 1557. Ante quem nullus erat impressus, neque postea ausi sunt vlli Tipographi ipsum excudere timentes hanc nostram, quantula eacumque (*sic*) est, diligentiam, quam non ignorant."

Quam igitur fuerit editio Lugdunensis vitiosa et corrupta quantoque sit illa Salmanticensis (anni scilicet 1565) emendatior, ex his, lector, nobis tacentibus, agnoscis. Sed nescio quonam acciderit casu, ut in hanc Salmanticensem editionem tam tersam, tam nitidam, tam auream, nec pauca nec levia menda vitiaque obrepserint. Laborat nonnunquam eisdem vitiis quibus Lugdunensis, nonnunquam propriis, quæ vel ex Lugdunensi vel alia ratione aliqua corrigi fuerit necessum. Quid tunc agerem, lector, tam mendoso etiam Salmanticensi exemplari, in quo corrigendi alterum spem mihi collocarem? Transcriberemne totum Salmanticense (caverat enim

¹This is corrected in S.

vir ille generosus, qui nobis utendum dederat, typographo ne committeretur nec ullis inficeretur notis) illudque typographo ad recudendum traderem? At id nec vacabat nec, si vacasset, ad opus emendate edendum fuisset utile propter errata et vitia, quae in illud obrepsisse diximus. Corrigeremne codicem Lugdunensem totum, sicut ante ex parte correxeram, antequam Salmantinum haberem, et correctum typographo praeberem? Nec id fieri poterat, quod ille multo pluribus et gravioribus quam hic corruptus esset vitiis, et quia, nisi illum ex Salmanticensi emendaremus, frustra hunc accepisse utendum videremur.

Rem igitur ita constitui. A quo loco typographus excudendi opus intermiserat (intermiserat enim casu post folium quintum, quod littera E notari solet), ab eo ipse et prudens socius, quem assumpseram, utrumque codicem contulimus accuratissime et Lugdunensem, qui typographo tradendus erat, ex Salmanticensi, ubicumque hoc nullum habuisset apertum mendum, pro eo ac potuimus, correximus. Vbi vero grave et apertum vitium in Salmanticensi occurrit (nam in levioribus mendis tollendis meo iudicio putavi standum) theologos et philosophos petitissimos consului, ut communi multorum iudicio, perpensis in utroque exemplari omnibus et verbis et sententiis auctoris, quae ad eius intellegendam mentem facere viderentur, vitium corrigeretur. Accidit nonnunquam, ut omnes simul corrupti alicuius loci restituendi vix rationem aut modum ullum inveniremus. Qui fidem nobis non habet, is in utraque editione vel locum unum legat in Relectione de Augmento Caritatis, circa numerum 10, ex quo si certam auctoris sententiam eisdem verbis retentis eruerit, tunc demum nos mendacii aut inscitiae arguat.

Hac ergo ratione cum utramque editionem ad finem usque contulisse-
mus, etiam quinque folia, quae diximus fuisse typis excusa, studiose ex Salmanticensi codice correximus, ne ad absolutam integramque totius operis expurgationem quippiam desideraretur. Errata, quae in his foliis inciderunt, quia in his ipsis tollere nequivimus, in fine inter errata reliqua notavimus.

Magnus quidem et molestus hic labor, sed ille maior et molestior, quem suscepimus in toto opere iam ad Salmantinum codicem emendato simpliciter omnique ex parte corrigendo, repurgando et scholiis illustrando. Quae res eo fuit operosior et difficilior, quo fuit utraque editio corruptior et quo auctor propter acerrimi ingeni vires, quas more doctissimorum virorum in res praesentes intendit, minus videtur studiosus verborum, minus memor ordinis aut eorum, quae in initio ad disputandum proposuit. Vnde factum videtur, ut nonnunquam nimis concisa et scholastica videri possit uti oratione, nonnunquam ad argumenta nonnulla proposita non respondere, nonnunquam ad multa simul responsum unum reddere, nonnunquam, dum quaestionem positam disputat aut argumentum aliquod refutat, occurrentes quaestiones et dubia interserere, nonnunquam ex disputandis quaestionibus,

quas in initio relectionis proposuit (ut constat in Relectione de Matrimonio et Relectione de Temperantia), aliquas prorsus praetermittere.

Nec hic noster constitit labor, sed tertio totum opus iam typis excusum percurrere opus fuit, cum ad conficiendum indicem alphabeticum tum ad errata corrigenda. Quae dum perficere conamur, illud eadem opera praestitimus, ut huius nostrae editionis codicem unum multo quam fuerit iam editus emendatiorem reliquerimus, plurimis vitiis et mendis, quae vel postea inciderant vel antea non occurrerant, sublatis, ex quibus pauca quidem, sed tamen potiora, inter errata in fine libri annotavimus. Ex quibus, lector, intellegis non omnia errata in fine libri animadversa typographi vel incuria vel inscitia accidisse, sed multa irrepsisse (praesertim in quinque foliis primis, quia careremus exemplo Salmantino) vel propter utriusque editionis, qua usi sumus, depravationem vel etiam nostra causa, qui omnia pervidere et pernoscere nequivimus. Locos tamen non paucos, qui corrigi videbantur posse dedita opera, reliquimus, tum quod eodem modo in utraque editione vel certe in Salmantino exstarent, tum ne quispiam nimiam licentiam in alieno opere corrigendo nobis obiciat.

De auctore harum Relectionum hoc tantum habeo compertum: vixisse illum Imperatore et Hispaniarum rege Carolo huius nominis quinto; fuisse Ordinis Sancti Dominici; eiusdem Ordinis exstitisse praeclarum lumen et ornamentum; floruisse maxime acerrimi ingeni, iudicii et solidae doctrinae laude, discipulorum doctissimorum (e quibus nonnulli ex editis libris notissimi sunt, ut Melchior Canus, Dominicus Sotus) multitudo et gloria; tantam praeterea huius viri fuisse apud omnes auctoritatem, tantum nomen exstitisse, ut auditoribus tanquam alterum Pythagoram representaret, ut a theologis et philosophis doctissimis theologorum et philosophorum suae memoriae alpha et princeps haberetur, ut I. Catholici Hispaniae Reges causas ad ipsorum conscientiam attinentes (quales fuerunt (1.) subactarum Novi Orbis provinciarum et (2.) repudiatae uxoris a Rege Angliae, de quibus in hoc opere disputatur) ad eum detulerint ab eoque in his doceri cum primis voluerint, ut ipse hac ipsa, quam non ignorabat, auctoritate fretus de regum atque adeo II. summi Pontificis causis liberrimum, pro eo ac conscientiae ratio postularet, iudicium tulerit. Haec attentius considerans dubitare soleo, maiordine laude digna sit viri huius certa quaedam *παρρησία* auctoritatis et eruditionis eximiae praesidiis munita an ipsorum Regum Hispaniae atque adeo ipsius summi Pontificis singularis animi moderatio et aequitatis veritatisque cognoscendae actuendae desiderium. Ex quo fit, ut a viro hoc doctissimo obiurgari se tacite reprehendique (cum doctrinae tradendae ratio postulat) aequis, immo libentibus animis patiantur. Retinent enim sapientissimi Reges hi, quod rex alius scriptum reliquit: "Corripiet me iustus in misericordia et increpabit me; oleum autem peccatoris non impinguet caput meum."*

*Ps. 140, v. 5 (Vulgate).

Quapropter iniuria traducunt nostrae aetatis haeretici apud omnes monachorum ordinem eo nomine, quod rudes et indocti sint et pontificibus et principibus adulentur. Hi profecto, si cum nostro Francisco Victoriae conferantur, nec theologorum nomine digni erunt nec quicquam ad veritatem dicere aut scribere, sed omnia principum auribus dare videbuntur. Quantum autem Salmanticensis Academia atque adeo Hispania huic viro debeat, idem Alphonsus Mugnosius in Epistula ad Serenissimum Hispaniarum Principem Carolum his verbis testatur:

“Multum debet Hispania tota huic praestantissimo viro, quoniam ipse pluribus nominibus demeritus est, illo praesertim quod cum Theologia apud Hispanos canfusanea (*sic*), puluerulenta, aut potius lutulenta, lacera, pannosa, muta, ac pene elinguis iaceret, huius solius ope claritati, nitori, candorique suo, puritati ac dignitati, venustati, ornatui et integritati veluti longo postliminio restituta est. Testimonio sunt huius veritatis non modo centuriae, sed Yliades etiam discipulorum eiusdem, quos schola ipsius quoque versum effudit.”

Relectionis autem nomine, ne forte ignotum id tibi, lector, videatur, scito intellegi apud Salmanticenses genus theologiarum exercitationum earum disputationum non admodum dissimile, quas maiorum nostrorum memoria in celeberrimis academiis in usu fuisse et quodlibeticas quaestiones vocatas esse compertum est. Quae enim quaestiones ex his, quae in cottidianis praelectionibus toto anno disputatae essent, difficiliore et utiliores videbantur, et in his relectionibus in publico doctissimorum hominum coetu ita ab eodem doctore repetebantur, ut multo quam antea accuratius deciderentur, et tanquam ultimam manum acciperent. Et quoniam hic auctor illius memoriae theologorum maxime apud Hispanos princeps citra controversiam fuit, intellegis quaecumque in his Relectionibus disputando constituta sunt, ea omnia doctissimi theologi iudicio esse tanquam peritissimi aurificis statera examinata et ponderata et idcirco multo solidiora et firmitiora his iudicari debere, quae ab huius memoriae haeticis, hominibus videlicet doctrina et iudicio carentibus, levi brachio disputantur.

Etsi autem videri possunt Relectiones hae Hispanorum potius ingenii quam Germanorum accommodatae, quod illi gymnicum et concisum, hi sedatum et oratorium theologandi genus consecretentur, attamen si et disputandi modum et doctrinae in eis traditae fructus spectemus, multum Germanis allaturae videntur adiumenti et commodi. Si enim consideremus attentius, a quo tempore falsarum opinionum et haereseon fluctus Ecclesiae navim quater his in locis coeperunt, ab eo a plerisque omnibus (forte convicia haeticorum in philosophos et scholae theologos metuentibus) Theologiam praesidiis et armis scholae philosophicae et theologicae nudatam ad oratoriam esse vel grammaticam potius rationem revocatam, eaque de causa ab iis ita manibus illotis ad sacras litteras accedentibus vel nihilo maiores in illarum studiis progressus factos quam a grammatico aut rhetore ingenioso facti essent vel ex inscitia exercitationisque disputandi et

iudicandi insolentia pravas opiniones aut esse genitas aut defensas, in eam potissimum ducemur sententiam (in quam ductum se M. Tullius in re simili testatur), ut existimemus doctrinam theologicam sine eloquentia non multum prodesse Christianae Reipublicae, eloquentiam vero sine doctrina nimium obesse plerumque, prodesse nunquam. Quare si quis (ut eiusdem M. Tulli verbis parum immutatis utamur), omissis rectissimis illis atque certissimis studiis theologiae divinaeque doctrinae, consumit omnem operam in exercitatione dicendi aut scribendi, is inutilis sibi, perniciosus patriae civis et matris Ecclesiae parricida futurus alitur. Qui vero ita sese armat eloquentia, ut non oppugnare commoda patriae Ecclesiaeque doctrinam, sed pro his propugnare possit, is nobis vir et suis et publicis rationibus utilissimus, amicissimus civis atque Ecclesiae matris filius carissimus fore videtur.

Haec non ideo, lector, attuli, quod putem in theologiae tradendae ratione vel Franciscum hunc Victoriam Hispanosque ceteros esse indisertos et infantes vel Germanos esse doctrinae solidae vacuos et expertes (novi enim et hunc Victoriam in his Relectionibus, quantum res fert, eloquentem esse ceterosque Hispanos, praesertim cum ab scholae loquendi consuetudine discedere libet, diserte posse et dicere et scribere, Germanos etiam non paucos philosophiae et theologiae doctrinis esse perfecte excultos), sed quod existimem optime suis et patriae rationibus Germanos theologos consulturos, si solidum illud et scholasticum theologandi genus, quale est huius Victoriae et communiter Hispanorum, cum sedato illo et oratorio, quod ipsi plerumque consecantur, studiose coniungant.

Fructus porro harum Relectionum et uberes sunt et multiplices, quos poterunt vel hi, qui aliorum doctores sunt, vel reliqui omnes percipere. Id vero ex singulis relectionibus possumus planum facere.

Cum enim in prima relectione duplex potestas in Ecclesia distincta esse monstratur, ecclesiastica et civilis, et illa hac potior ostenditur, falsum evertitur dogma Lutheranorum utramque potestatem exaequantium, vel ecclesiasticam civili subicientium.

In secunda, quae etiam inscribitur "*De Potestate Ecclesiastica*," duplex refutatur haereticorum dogma: unum, potestatem proprie ecclesiasticam et spiritualem primo et per se inesse in tota Ecclesia universali ad eum modum, quo potestas civilis est in Republica civili; alterum, Christianos omnes esse sacerdotes, omnes aequales, nullum esse ordinem nullosque certos gradus ecclesiasticae potestatis.

In tertia potestatis civilis necessitas, origo atque vis et auctoritas ita constituitur et firmatur, ut perniciosum dogma Lutheri, quod perniciem innumerae propemodum rusticorum multitudini attulit, per sese corruat.

Quarta disputationem continet pulcherrimam "*De Potestate Papae et Concilii*," quae tametsi minus videatur iis esse usui, qui cum haereticis

pugnant aut haeticorum consuetudine afficiuntur, est tamen his ipsis utilis et fructuosa. Dum enim quam late pateat et summi Pontificis et Concilii generalis potestas explicatur, simul utrique summa potestas et auctoritas, suo tamen modo adseritur. Summi autem Pontificis et Conciliorum auctoritate stabilita et apud Germanos praeponderante, constat fore ut et sectae nullae apud eos propagentur et haereses omnes, non secus ac tenebrae lucente sole, dispellantur.

Quinta, quae “De Indis” inscribitur (h. e., de barbaris Novi Orbis hominibus, quos vulgus Indos nominat), tametsi responsum esse videri potest Catholicis Hispaniae Regibus ab auctore redditum, multa tamen continet iis omnibus utilia et salutaria, qui in eadem vel simili, qua Reges illi, causa esse possunt. Qualia sunt, quemadmodum dubitans de causa aliqua ad conscientiam pertinente consulere doctos et sapientes in eo genere debeat; quemadmodum quod fuerit a sapientibus definitum, sequi, etiamsi illi, ut accidere potest, errarent; quam multi esse possint tituli illegitimi, quam multi legitimi, quibus exteras provincias aut homines Reges illi in suam potestatem redigere potuerint. His enim accurate disputatis et constitutis, conscientia eorum, quorum interest, aperte docetur, quid in hac causa cavendum sit, quid agendum.

In sexta, quae est “De Indis posterior, sive de Iure Belli,” multa eaque salutaria traduntur documenta, quae et a regibus atque principibus servari oporteat, ut iuste bellum inferant aut gerant, et reliquis omnibus, ut iuste militare aut merere sub suo aut alieno principe valeant. Dogma interim illud haeticorum refutatur, non licere Christianis principibus vel cum aliis Christianis vel cum Turcis bellare.

In septima, quae videtur responsum auctoris ad causam illam Reginae Angliae a Rege coniuge suo repudiatae, strenue expugnatur dogma illud falsum Lutheranorum, omnes gradus, qui Levitici 18 et 20 vetiti sunt, etiam nunc vetari divino iure. Male praeterea habet haeticos, quod in hac relectione firma ratione ostenditur causas matrimoniales iure et merito ad ecclesiasticos iudices deferri.

Octava, in qua “De Augmento et Decremento Caritatis” agitur, disputationem quidem continet ad scholas theologorum potius quam ad concionem aut alios homines pertinentem, attamen quae ipsis theologis multum adferat adiumenti, cum ad ingenium acuendum, tum ad rei pulcherrimae vereque theologiae perceptionem. Possemus etiam illud addere, damnari hic haeticorum opinionem illam, omnes iustos esse caritate et gratia apud Deum pares nec ulla in re Sanctissimam Virginem Christi matrem mulieri ulli de media plebe, Luthere adsertore, antecellere.

Nona “De Temperantia” variam et iucundam continet disputationem, quaeque his in locis propter controversiam de alimentorum delectu grata plerisque fore videatur. Damnantur hic barbari homines anthropophagi

et qui homines Deo sacrificabant. Defenduntur Carthusienses, qui carnis perpetuo abstinent, et alii viri religiosi, qui alioqui videntur per abstinentiam vitae spatium brevius efficere. Plura in hac relectione contra haereticos praesidia haberemus, nisi auctor quaestionum in initio positarum unam aut alteram prorsus praetermisisset.

Decima, in qua "De Homicidio" disputatur, multis modis utilis est; plura vero in ea definiuntur quam ut possint a nobis summatim comprehendere.

Vndecima disputationem "De Simonia et Simoniacorum Poenis" complectens non utilis modo, sed etiam necessaria his in locis videri potest, ubi labes haec tam inveterata est tamque late serpsit, ut vix in vitio ponatur. Nec haeretici ab hoc vitio liberi sunt, tametsi ab Ecclesiae corpore praecisi.

Non minus utilis ac necessaria est duodecima, in qua "De Magia" disputatur, auditione siquidem certa frequenter accepimus, quin immo certo scimus, post invectum per Martinum Lutherum novum Evangelium, eum esse consecutum statum in Septentrionis maxime provinciis, ut, doctrina Christi sensim in mentibus hominum deficiente et occidente, Magia sensim ita convaluerit, ut, illa prorsus exstincta, sola cum socia Haeresi regnare videatur. Nec huius Magiae atque spiritus Pythonici expertes aut vacui omnino sunt Anabaptistae et Calvinistae, quin potius eum spiritum verbis, scriptis, moribus, facie et oculis spirant.

In ultima relectione argumentum tractatur homine Christiano dignissimum, ad quid nimirum quisque teneatur, quando primum ad usum rationis pervenit. Quid enim convenientius ab homine praesertim Christiano doceri aut disci potest quam status vel modus ille, quo sese ad Deum, finem videlicet ultimum summumque bonum suum, convertat, cuius fruendi causa creatus est?

Partes iam tuae, Christiane lector, eae sunt, ut opus hoc, in quo emendando nos tantum operae temporisque posuimus, quod a tali tantoque theologo elucubratum est, quod doctrinam continet tam certam et solidam, tam utilem et necessariam, grato et libenti animo suscipere tuaque studia eius lectione et meditatione ad altissimarum rerum cognitionem excitare. Nobis abunde satisfactum erit, si huius tu lectione et doctior et melior evadas. Vale.

Ingolstadii, ipso die S. Laurentii Martyris, anno 1580.

302 REVERENDI PATRIS, FRATRIS FRANCISCI DE VICTORIA,
DE INDIS RECENTER INVENTIS¹
RELECTIO PRIOR.

*Locus releendus est ex Matthaeo, "Docete omnes gentes, baptizantes eos
in nomine Patris, et Filii, et Spiritus sancti," Matth., ult. cap.²*

SECTIONIS PRIMAE SVMMA.³

1. Dubius in rebus, ut sit tutus in conscientia, quomodo debeat consulere illos, ad quos spectat haec docere.
2. Dubius in rebus, post consultationem rei dubiae, debet sequi id, quod diffinitum fuerit a sapientibus, alias non erit tutus.
- 303 3. Dubius in rebus, si, post consultationem rei dubiae, diffinitur a sapientibus illud esse licitum, quod alias est illicitum, ut sit tutus in conscientia, an debeat sequi sententiam illorum.
4. Indi barbari utrum essent veri domini ante adventum Hispanorum privatim et publice; et utrum essent inter eos aliqui veri principes et domini aliorum.
5. Error quorundam recensetur, qui dicebant nullum in peccato mortali existentem habere dominium in quacumque re.
6. Peccatum mortale non impedit dominium civile et verum dominium.
7. Dominium utrum perdatur ratione infidelitatis.
8. Haereticus iure divino non amittit dominium bonorum suorum ob haeresim commissam.
9. Haereticus an de iure humano perdat dominium bonorum suorum.
10. Haereticus a die commissi criminis incurrit poenam confiscationis bonorum.
11. Haereticorum bona non licet fisco occupare ante condemnationem, quamvis de crimine constet.
- 304 12. Condemnatione facta etiam post mortem haeretici, retroagitur bonorum confiscatio ad tempus commissi criminis, ad quamcumque pervenerint potestatem.
13. Haeretici venditiones, donationes, et omnis alia alienatio bonorum a die commissi criminis sunt invalidae, etc.
14. An haereticus sit dominus bonorum suorum in foro conscientiae, antequam condemnetur.
15. Haereticus licite potest vivere ex bonis suis.
16. Haereticus titulo gratuito potest transferre bona sua, puta donando.
17. Haeretico non licet titulo oneroso, puta vendendo aut dando in dotem, bona sua transferre, si crimen posset venire in iudicium.
18. Haereticus in quo casu, etiam titulo oneroso, posset bona sua licite alienare.
19. Barbari, nec propter peccata alia mortalia nec propter peccatum infidelitatis, impediuntur quin sint veri domini, tam publice quam privatim.

¹So M; B has *De Indis insularis*, S *De Indis noviter inventis*. See p. 191.

²Cap. 28, v. 19.

³This summary was first supplied by BOYER, although the present division into three sections is the work of the editor of the third or subsequent edition. The text of the summary given here is that which appeared in S (simply because it is the edition that is being reproduced), except where it is manifestly in error. Consequently, no variant readings are given for the text of this summary.

20. Dominii ut quis sit capax, an usus rationis requiratur.
 21. Puer an possit esse dominus ante usum rationis.
 22. Amens an possit esse dominus.
 23. Barbari, amentiae praetextu, non impediuntur esse veri domini, cum non
 sint amentes. 305
 24. Indi barbari, antequam Hispani ad illos venissent, erant veri domini, et publice
 et privatim.¹

“Docete omnes gentes, baptizantes eos in nomine Patris, et Filii, et Spiritus sancti,” *Matth.*, ult.² In quem³ locum movetur quaestio,⁴ an liceat baptizare filios infidelium, invitis parentibus. Quae quaestio tractatur a doctoribus (*Quarto Sententiarum*, dist. 4) et a S. Thoma (*Secunda Secundae*, qu. 10, art. 12,⁵ et *Tertia Parte*, qu. 68, art. 10⁶). Et tota disputatio et relectio suscepta est propter barbaros istos Novi Orbis, quos Indos vulgo vocant, qui ante quadraginta annos venerunt in potestatem Hispanorum, ignoti prius nostro orbi. Circa quos praesens disputatio habebit tres partes. In prima tractabitur, quo iure venerint barbari in dicionem Hispanorum. In secunda, quid possint Hispaniarum⁷ principes erga illos in temporalibus et in⁸ civilibus. In tertia, quid possint vel ipsi vel Ecclesia 306 erga illos in spiritualibus et in spectantibus ad religionem, ubi respondebitur ad quaestionem propositam.

Disputatio
haec tripar-
tita.

An dispu-
tatio haec
tota sit
inutilis.

Quoad primam partem, ante omnia videtur quod tota haec disputatio sit inutilis et otiosa, non solum inter nos, ad quos non spectat, aut, si omnia recte geruntur in administratione illorum hominum, disputare aut dubitare de illo negotio aut, si quicquam forte peccatur, illud emendare, sed etiam⁹ apud eos, quorum interest haec considerare et administrare. Primo, quia neque principes Hispaniarum⁷ neque qui eorum consiliis praepositi sunt tenentur de integro examinare et retractare iura et titulos, de quibus alias deliberatum est et decretum, maxime in his, quae bona fide principes occupant et sunt in pacifica possessione, quia, ut Aristoteles dicit (tertio *Ethicorum*¹⁰), “si semper quispiam consultaverit, in infinitum res abiret”; neque possent principes et eorum¹¹ consilarii esse securi et certi in conscientia sua, et, si oporteret a primordio repetere titulos suae dicionis, nihil exploratum possent tenere. Et praeterea, cum principes nostri, scilicet Ferdinandus et Isabella, qui primi occupaverunt regiones illas, fuerint 307 Christianissimi, et Imperator Carolus Quintus sit princeps iustissimus et religiosissimus, non est credendum quin habeant exploratissima et exquisitissima omnia, quae¹² spectare¹³ possunt ad securitatem sui status et conscientiae, maxime in tanta re. Atque adeo non solum supervacaneum, sed etiam temerarium videri potest de his disputare, et hoc videtur esse quaerere nodum in scirpo et iniquitatem in domo iusti.

¹Following this twenty-fourth proposition in **B** and **M** are listed propositions 25-40.

²*Matth.*, cap. 28, v. 19.

³**M** has *hunc* in place of *quem*.

⁴**B** adds *pastoralis*.

⁵“Utrum pueri Iudaeorum et aliorum infidelium sint invitis parentibus baptizandi.”

⁶“Utrum pueri Iudaeorum vel aliorum infidelium sint etiam invitis parentibus baptizandi.”

⁷**M** has *Hispanorum*.

⁸**M** omits this *in*.

⁹**B** has *neque* in place of *etiam*.

¹⁰Cap 5: *et dē ad bouleboerai, eis āπειρον ἤξει*.

¹¹**M** has *aliorum*, which, however, is corrected in **M**'s Errata to *eorum*.

¹²**B** has *que*.

¹³**M** has *expectare*.

Pro solutione huius obiectionis est considerandum, quod Aristoteles dicit (tertio *Ethicorum*¹), quod sicut consultatio et deliberatio non est de rebus impossibilibus aut necessariis, ita nec consultatio moralis est nec² de illis, de quibus certum et notum est esse licita et honesta, neque e contrario, de quibus certum³ est esse illicita et inhonesta. Neque enim quicumque recte consultaverit an temperate,⁴ fortiter, iuste vivendum sit vel iniuste aut turpiter agendum, neque an adulterandum, an peierandum, an⁵ colendi parentes, et cetera huiusmodi. Certe non esset consultatio Christiana.⁶ Sed cum aliquid agendum proponitur, de quo dubitari merito potest an sit rectum vel pravam, iustum aut⁷ iniustum, de his expedire
308 consulare et deliberare, neque prius temere aliquid agere, quam sit inventum et exploratum quid⁸ liceat aut non liceat. Talia sunt, quae in utramque partem habent speciem boni et⁹ mali, qualia sunt multa genera commutationum et contractuum et negotiorum. Et in his omnibus ita res se habet, quod, si quis, antequam deliberaverit et legitime illi constiterit tale factum licitum esse, aliquid¹⁰ tale faceret, et forte secundum se esset licitum, talis peccaret, neque excusaretur per ignorantiam, cum illa, ut patet, non esset invincibilis, postquam ille non facit, quod in se est, ad examinandum quid⁸ liceat aut non liceat. Ad hoc enim, ut actus sit bonus, oportet, si alias non est certum, ut fiat secundum diffinitionem et determinationem sapientis; haec enim est una condicio boni actus (secundo *Ethicorum*¹¹), ut fiat secundum diffinitionem sapientis.¹² Atque adeo, si iste non consuluit sapientes in re dubia, excusari non potest. Immo dato quod talis actus secundum se licitus esset, postquam dubitatur merito de illo, tenetur quilibet consulare et arbitrio sapientum facere, etiamsi forte illi errarent.

309 Vnde si quis contractum, de quo inter homines dubitatur an sit licitus necne, faceret sine consilio doctorum,¹³ sine dubio peccaret, etiamsi alias contractus esset licitus et ipse ita putaret, non ex auctoritate sapientis, sed ex sua affectione et sententia. Et¹⁴ eadem ratione, si quis in re dubia consuluit¹⁵ sapientes et illi determinaverint illud non licere, si talis proprio iudicio faceret aliquid tale, peccaret, etiamsi alias illud in se esset licitum. Vt si quis, exempli gratia, esset dubius an haec sit uxor sua, consultat an teneatur reddere debitum vel utrum liceat vel etiam exigere, respondetur a doctoribus quod nullo modo licet, ipse autem ex affectu uxoris vel propria cupiditate non credit, sed putat sibi licere, certe peccaret accedens ad uxorem, quamvis de se licitum esset, sicut re vera est, quia talis facit contra conscientiam, quam tenetur habere. Tenetur enim credere in his, quae spectant ad salutem, his, quos Ecclesia posuit ad docendum, et in re dubia arbitrium illorum est lex. Sicut enim¹⁶ in foro contentioso iudex tenetur iudicare secundum allegata et probata, ita in foro conscientiae quilibet

Responsum
auctoris
prolixum.

Quae cadant
sub consul-
tationem.

In dubiis
nihil agen-
dum quous-
que consti-
terit quid
liceat; qui
secus fece-
rit, peccat.

Consulendi
sapientes ut
intellegas,
quid in his
liceat, ex
eorumque
arbitrio
agendum.

Qui in huius-
modi dubiis,
inconsultis
sapientibus,
aliquid agit,
peccat, tametsi quod
agit alioqui
liceret.

¹Cap. 5, as above.

²M and S omit this nec.

³M adds et evidens.

⁴M and S have temperare.

⁵B omits an.

⁶M has Christiano: digna; which may be an example of M's tendency to improve. See p. 197.

⁷M has an in place of aut.

⁸B has quod.

⁹B and S have aut.

¹⁰B has aliquod.

¹¹Cap 5: ἐν μεσότητι . . . ἀριστήν λόγῳ καὶ ὡς ἂν ὁ φρόνιμος ὁρίσσει.

¹²M omits ut . . . sapientis. B may have repeated this phrase from the second line above.

¹³B has doctorum.

¹⁴S omits Et.

¹⁵S has consulit.

¹⁶M has Nam sicut.

tenetur iudicare, non ex proprio sensu, sed vel per rationem probabilem vel per auctoritatem sapientum¹; alias est temerarium iudicium et exponit se periculo errandi et hoc ipso errat. Sicut² in Veteri Testamento (*Deut.*, 17³) praecipiebatur:

Si quid esset⁴ ambiguum "inter sanguinem et sanguinem, causam et causam, lepram et non⁵ lepram, et iudicium⁶ intra portas tuas videris variare, surge et ascende ad locum, quem elegerit Dominus Deus tuus, veniesque⁷ ad sacerdotes Levitici generis et ad iudices, qui fuerint⁸ illo tempore, quaeresque ab eis qui indicabunt⁹ tibi iudicium veritatis, et facies quodcumque dixerint qui praesunt loco, sequerisque sententiam eorum, neque declinabis ad dextram neque ad sinistram."

Ita, inquam, in rebus dubiis tenetur quilibet consulere illos, quos Ecclesia ad hoc constituit, quales sunt praelati, praedicatores, confessores, divinae et humanae legis periti. Sunt enim in Ecclesia alii oculi, alii pedes, etc. (*I ad Cor.*, 12). Et (*ad Ephes.*, 4¹⁰) "Et ipse dedit quidem quosdam apostolos, alios Evangelistas, alios autem pastores et doctores." Et "Super cathedram Moysi sederunt Scribae et Pharisei; omnia quaecumque dixerint vobis, servate et facite" (*Matth.*, 23¹¹). Et facit etiam praeceptum Aristoteles (primo *Ethicorum*¹²) ex Hesiodo¹³:

At qui ex se nescit, cuiquam neque porrigit aures,
Vt bona percipiat, demens et inutilis ille est.

Itaque non satis est ad securitatem vitae et conscientiae, ut quis putet¹⁴ se bene agere, sed in rebus dubiis necesse est, ut aliorum, ad quos spectat, auctoritati nitatur. Nec enim negotiatoribus satis est, ut nihil faciant, quod ipsi¹⁵ illicitum putent, si alias sine consilio peritorum illicitos contractus faciant. Vnde non puto verum, quod Cardinalis Caietanus

Advertant
hoc nego-
tiatores.

¹B has *sapientiorum* (cf. *doctorum*, p. 219, n 13); M has *sapientium*, although on the preceding page and elsewhere, M has *sapientum*. ²M adds *enim*.

³Vv. 8-II, as quoted, except that the VULGATE has *Si difficile et ambiguum apud te iudicium esse perspexeris inter . . . videris verba variari . . . ad iudicem, qui fuerit . . . tibi iudicii veritatem . . . loco quem elegerit Dominus, et docuerint te iuxta legem eius, sequerisque sententiam eorum, nec . . . ad sinistram*. ⁴S has *erit*.

⁵This *non* does not appear in the Clementine edition of the VULGATE and seems out of place in company with the two preceding comparisons. VICTORIA is evidently quoting from an earlier edition of the VULGATE, in which the *non* appeared, as is the case in the editions of Robert Stephanus, e. g., Antwerp, 1537. It must be remembered that the Clementine revision did not take place until long after Victoria's death.

⁶M and S insert *ait Dominus* here, perhaps for greater clearness (see p. 197).

⁷B, M and S have *veniensque*.

⁸M has *iudicem qui fuerit*, following the VULGATE; S adds *in*.

⁹M has *iudicabunt*.

¹⁰V. II; VULGATE has *quosdam quidem* and after *apostolos* has *quosdam autem prophetas*.

¹¹Vv. 2-3; VULGATE has *ergo* after *omnia*. ¹²Cap. 3.

¹³*Works and Days*, ll. 296-297. The above is a Latin translation of the last two lines of the following:

οὗτος μὲν πανάριστος, ὃς αὐτὸς πάντα νοήσῃ, . . .
ἐσθλὸς δ' αὖ κακείνος ὃς εὖ εἰπόντι πλῆθται,
ὃς δὲ κε μήτ' αὐτὸς νοέῃ μήτ' ἄλλου ἀκούων
ἐν θυμῷ βάλλεται, ὃ δ' αὖτ' ἀχρήσιος ἀνὴρ.

¹⁴S has *putat*. The usage of the time, however, allows either in this construction. Consequently, there is no necessity for rejecting the reading of B and M. ¹⁵B has *ipsis*.

dicit, quod, si re vera aliquid secundum se est licitum, si veniat in dubium, quamquam¹ praedicatores aut confessores, qui alias² habent auctoritatem iudicandi in istis, dicant illud esse illicitum vel³ veniale dicant⁴ esse mortale—quod qui⁵ ex affectu ad rem non credit illis, sed format sibi conscientiam quod non est⁶ mortale, non peccat. Exemplum ponit, ut quod feminae utantur fuco et aliis ornamentis superfluis, quod re vera non est mortale, dato quod praedicatores et confessores dicerent esse mortale. Si⁷ femina ex studio se ornandi non credit, sed putat vel esse licitum vel

Caietanus reprehenditur.

312 non esse mortale, non peccat mortaliter ita se ornando. Hoc, inquam, periculosum est. Nam femina tenetur credere in his, quae sunt necessaria ad salutem, peritis,⁸ et exponit se periculo faciens⁹ contra illud, quod secundum sententiam sapientum est mortale. Et e contrario, in re dubia, si quis deliberavit¹⁰ cum sapientibus et accepit determinationem quod illud est licitum, talis est tutus in conscientia, quousque fortasse iterum sit admonitus vel tali auctoritate vel huiusmodi rationibus, quibus merito debeat moveri ad dubitandum vel etiam credendum contrarium. Hoc est notum, quia facit, quod in se est, et sic¹¹ ignorantia est invincibilis.

Advertant hoc feminae.

Consilium sapientum sequens tutus in conscientia, quousque non habet rationem dubitandi aut credendi contrarium.

Ex his ergo conficiuntur propositiones.

1. Prima: In rebus dubiis quilibet tenetur consulere¹² illos, ad quos spectat haec docere, alias non est tutus in conscientia, sive illa dubia sint de re¹³ in se licita sive illicita.

I Prop.

Tres propositiones colliguntur ex dictis.

2. Secunda: Si, post consultationem rei dubiae, diffinitum sit a sapientibus illud esse illicitum, quilibet tenetur sequi sententiam illorum et contrarium faciens¹⁴ non excusatur, etiamsi alias illud esset licitum.

II Prop.

3. Tertia: E contrario, si, post consultationem rei dubiae, diffinitum sit a sapientibus illud esse licitum, qui sequitur sententiam illorum, est tutus, etiamsi alias sit illicitum.

III Prop.

Ergo redeundo ad propositum negotium barbarorum, nec est de se ita evidenter iniustum, ut non possit disputari de iustitia illius, nec rursus ita evidenter iustum, ut dubitari non possit de iniustitia illius, sed in utramque partem videtur habere speciem. Nam primum cum videamus totum illud negotium administrari per viros et doctos et bonos, credibile est recte et iuste omnia tractari. Deinde cum audiamus tot hominum caedes, tot spolia hominum alioqui innoxiorum, deturbatos tot dominos possessionibus et dicionibus suis privatos, dubitari merito potest iure an iniuria haec facta sint. Et sic haec disputatio non videtur omnino super-

Accommodat praedicta ad dubium propositum de Indis et respondet ad illud.

¹B has *quicumque* and S has *licet quicumque*. Some concessive conjunction is required here and M saw B as well as the manuscripts. It is more reasonable, therefore, to follow M here in preference to S. The use of *quamquam* with the subjunctive is frequent in later Latin. See HALE AND BUCK, *A Latin Grammar* (Boston, 1903), sect. 541.

²B has *alius*.

³B adds *sicut*.

⁴M has *dicunt*.

⁵M has *qui* simply and B has *quod* simply, but S has the obviously correct emendation. For the repetition of *quod*, see p. 204.

⁶S has *sit* instead of *est*, which B and M have, but see p. 220, n. 14.

⁷B omits *si*.

⁸M puts *peritis* after *credere*.

⁹B has *faciendi*.

¹⁰S has *deliberaverit*.

¹¹B has *etiam si*.

¹²B has *consultare*.

¹³B omits *de re*.

¹⁴S has *faciens contrarium*.

vacanea et per hoc patet responsio ad obiectionem. Et praeterea,¹ dato quod nullum esset dubium in tota hac quaestione, non est novum disputationes theologicas institui de re certa. Nam et disputamus de incarnatione Domini et aliis articulis fidei. Non enim semper disputationes theologicae sunt in genere deliberativo, sed pleraeque in genere demonstrativo, i. e., non ad consultandum, sed ad docendum susceptae.

Occurrit obiectioni I.

Quod si quis occurrat dicens, "Licet aliquando fuerint aliqua dubia 314 circa hoc negotium, fuerunt tamen iam haec tractata et diffinita a sapientibus, et sic ex consilio eorum iam omnia administrari, nec opus esse nova examinatione," respondetur primum, si ita est, benedictus Deus, nec nostra disputatio quicquam obstat, neque ego movere volo novas querelas. Secundo, dico quod haec determinatio non spectat ad iurisconsultos, vel saltem non ad solos illos, quia cum illi barbari, ut statim dicam, non essent subiecti iure humano, res illorum non sunt examinandae per leges humanas, sed divinas, quarum iuristae non sunt² satis periti, ut per se possint huiusmodi quaestiones diffinire. Nec satis scio an unquam ad disputationem et determinationem huius quaestionis vocati fuerint³ theologi digni, qui audiri de tanta re possent. Et cum agatur de foro conscientiae, hoc spectat ad sacerdotes, i. e., ad Ecclesiam, diffinire. Vnde (*Deut.*, 17) praecipitur regi, ut accipiat exemplar legis de manu sacerdotis. Tertio, ut summa rei sit satis examinata et certa, nonne in tanto negotio possunt alia peculiaria dubia occurrere, quae merito disputari possent? Itaque non solum non otiosum aliquod et inutile, sed magnum operae pretium⁴ me 315 facturum putarem, si hanc quaestionem pro dignitate possem tractare.

II.
Huius causae decisio non ad iuris peritos, sed ad theologos pertinet.

Atque adeo ad sacerdotes, i. e., ad Ecclesiam.

III.

Prima quaestio de Indis.

Arg. pro parte negativa.

4. Redeundo ergo ad quaestionem, ut ex ordine procedamus, quaeritur primo, utrum barbari isti essent veri domini ante adventum Hispanorum, et privatim et publice, i. e., utrum essent veri domini privatarum rerum et possessionum et utrum essent inter eos aliqui veri⁵ principes et domini aliorum. Et posset videri quod non, quia servi non habent dominium rerum; "servus enim nihil suum habere potest"⁶ (*Inst.*, Per quas personas nobis adquirere liceat,⁷ § *item vobis*,⁸ et *ff.*, De acquirenda vel omit-tenda⁹ hereditate, l. *placet*¹⁰) unde quicquid acquirit, domino acquirit¹¹ (*Inst.*, De his qui sunt, sui vel alieni iuris¹², § *nam apud omnes*¹³). Sed barbari isti sunt servi. Ergo.¹⁴ Probatur¹⁵; nam, ut Aristoteles (primo *Politicorum*¹⁶) eleganter et accurate tradit, "aliqui sunt natura servi, quibus scilicet melius est servire quam imperare." Ii autem sunt,¹⁷ quibus

¹B has *Et primum*.

²B and S omit *sunt*.

³S has *fuerunt*.

⁴B has *magno opere pretium*; M has *magnum opere pretium*.

⁵B and M have *viri*, but cf. *veri principes et domini*, p. 225, sixth line from bottom.

⁶The exact words of *Inst.*, 2, 9, 3, are: "Ipse enim servus, qui in potestate alterius est, nihil suum habere potest."

⁷KRUEGER has *nobis acquiritur*.

⁸*Inst.*, 2, 9, 3.

⁹B omits *vel omittenda*.

¹⁰*Dig.*, 29, 2, 79, which is an excerpt from ULPIAN, *Ad legem Iuliam et Papianam*.

¹¹B has *acquiratur* in both places.

¹²S has *sunt* here instead of *after qui*.

¹³*Inst.*, 1, 8, 1.

¹⁴B omits *ergo*.

¹⁵M adds *minor*, perhaps for greater clearness.

¹⁶Cap. 5: "Ὅτι μὲν τῶν μὲν εἰσι φύσει τινὲς οἱ μὲν ἐλεύθεροι οἱ δὲ δούλοι, οἱ καὶ συμφέρει τὸ δουλεῖν καὶ δικάειν ἔστιν. M omits *primo Politicorum*.

¹⁷B omits *sunt*.

ratio non sufficit ad regendum etiam se ipsos, sed solum ad iussa capessendum, et quorum vis magis in corpore est quam in animo. Sed profecto, si aliqui tales sunt, maxime isti barbari, qui re vera parum distare videntur
 316 a brutis animantibus et omnino sunt inhabiles ad regendum, et¹ sine dubio melius est illis ut regantur ab aliis quam ut se ipsos regant. Et Aristoteles dicit iustum naturale esse ut tales serviant. Ergo tales non possunt esse domini. Nec obstat quod ante adventum Hispanorum non haberent alios dominos; non enim repugnat servum esse sine domino, ut notat glossator in l. *si usum fructum*,² ff., De liberali causa. Immo habetur expresse in ipsa lege et est casus expressus in l. *quod servus*,³ ff.,⁴ De servorum, stipulatione,⁵ de servo, qui a domino relictus est et a nullo occupatus, quod potest a quocumque occupari. Si ergo erant servi, potuerunt ab Hispanis occupari.

In contrarium est, quia illi erant in pacifica possessione rerum, et publice et privatim. Ergo omino, nisi contrarium constet, habendi sunt pro dominis, neque, indicta causa, possessione deturbandi. Arg. pro parte affirmativa.

Pro solutione nolo revocare in propositum multa, quae a doctoribus traduntur de diffinitione⁶ domini, quae a me etiam late adducta sunt in materia de restitutione, *Quarto*, dist. 15, et *Secunda Secundae*, qu. 62. Illa,
 317 inquam, praetereo, ne occasione illorum omittam magis necessaria. Et ideo, his praetermissis, notandum quod, si barbari non haberent dominium, non videtur quod possit praetendi alia causa, nisi vel quia sunt peccatores vel quia infideles vel quia amentes vel insensati. Et distincti-
one.
Si barbari
non habue-
rint verum
dominium,
quot causae
possint prae-
tendi amitten-
di domini.

5. Fuerunt ergo aliqui, qui defendebant quod titulus domini est gratia et per consequens quod peccatores, saltem in mortali peccato,⁷ nullum habent dominium in quacumque re. Iste fuit error Pauperum de Lugduno, sive Waldensium,⁸ et postea Ioannis Wycliffe,⁹ cuius unus error damnatus in Concilio Constantiensi fuit: "Nullus est dominus civilis, dum est in peccato mortali."¹⁰ Eadem fuit sententia Armachani, lib. 10, *De quaestionibus Armenorum*, cap. 4, et in Dialogo, *Defensorium pacis*. Adversus quem scripsit Waldensis (Tom. I, *Doctrinalis antiquitatum*, lib. 3,¹¹ capp. 82 et 83; et¹ Tom. II,¹² cap. 3).¹³ Probat¹⁴ Armachanus, Error Wal-
densium,
Wycliffe, et
Armachani
circa primam
causam, h. e.,
peccatum.
Pro senten-
tia Armacha-
ni et prae-
dictorum.

¹S omits et.

²Dig., 40, 12, 23, which is an excerpt from PAULUS, *Ad edictum*.

³Dig., 45, 3, 36, which is an excerpt from JAVOLENUS, *Epistulae*.

⁴B and M omit ff.

⁵MOMMSEN has *De stipulatione servorum*.

⁶M adds et distinctione.

⁷M adds *existentes*; B omits in.

⁸M has *Valdesium*.

⁹*Tractatus de civili dominio*, lib. I, cap. 1: "Nemo ut est in peccato mortali habet iusticiam simpliciter ad donum Dei." M has the spelling *Wicleff*.

¹⁰*Acta et decreta generalis Concilii Constantiae*, 15th page from end in the edition used, under the heading, "Errores Johannis Wicleff de Anglia et Johannis Huss de Bohemia damnati in hoc sacro generali Constant. Concilio." The exact words used are: "Et primo sequitur tenor articulorum Johannis Wicleff. . . Nullus est dominus civilis, nullus est praelatus, nullus est episcopus, dum est in mortali peccato."

¹¹Tom. I, lib. 2, art. 3, cap. 81 (Contra Haeresim Wicleff, docentem nullum vere seculariter dominari, dum est in mortali), § 1, p. 399, coll. 1, BC, in the edition used: "(Wicleff) ponit et sustinet nullum posse censi dominum secularem vere, sine gratia gratum faciente, in libro suo de dominio civili, cap. ii, et deinceps, unde est conclusio ter damnata, c. xciii."

¹²Tom. II (De Sacramentis), cap. 3 (Non semper propter mortale peccatum potestas consecrationis sacramentalis suspenditur in praelato), p. 14, coll. 1, B, in the edition used.

¹³This entire sentence does not appear in B and, as it stands in M and S, contains several errors (see Errata, p. 469). It may be that this was added by M to secure greater completeness (see p. 197). B, M and S have *De antiq.*, which may have been another title of the *Doctrinale antiquitatum*.

¹⁴B has *Et probat*.

Arg. I.

quia tale dominium reprobatur a Deo (*Osee*, 8¹), "Ipsi regnaverunt, et non ex me; principes extiterunt, et non cognovi," et subiungitur causa: "Argentum et aurum suum fecerunt sibi idola, ut interirent," etc. Et ideo, inquit, tales carent iusto dominio apud Deum. Certum est tamen² omne dominium esse auctoritate divina, cum ipse Deus³ sit creator omnium, neque aliquis possit habere dominium, nisi cui ipse dederit. Non est 318 autem consentaneum, ut det inoboedientibus et transgressoribus praeceptorum suorum, sicut et principes humani non dant sua bona, ut villas aut castra, rebellibus, et si dederint, auferunt. Per humana vero⁴ debemus iudicare de divinis (*ad Rom.*, 1⁵). Ergo⁶ Deus non concedit dominium inoboedientibus. Vnde in signum huius Deus aliquando tales proicit a principatu, ut Saulem (*I Reg.*, 15 et 16) et de Nebuchodonosor et Balthasar (*Dan.*, 4 et 5). Item (*Gen.*, 1⁷) "Faciamus hominem ad imaginem et similitudinem nostram ut praesit piscibus maris," etc. Apparet ergo⁸ quod dominium fundetur in imagine Dei. Sed haec non est in peccatore.⁹

Arg. II.

Arg. III. Ergo non est dominus. Item talis committit crimen laesae maiestatis. Ergo meretur perdere dominium. Item Augustinus dicit quod peccator non est dignus pane, quo vescitur. Item Dominus dederat primis parentibus dominium paradisi et ratione peccati privavit eos illo¹⁰ (*Gen.*, 1¹¹). Ergo.

Arg. IV.

Verum est quod tam Wycliffe quam Armachanus non distincte loquuntur et videntur potius loqui de dominio superioritatis, quod est principum. Sed quia argumenta aequaliter procedunt de omni dominio, 319 ideo videntur sentire de omni dominio generaliter. Et ita intellegit illorum sententiam Conradus,¹² lib. I, qu. 7. Et satis clare dicit Armachanus. Qui ergo sequeretur hanc sententiam, posset dicere quod barbari non habebant dominium, quia semper erant in peccato mortali.¹³

Respondet
auctor hac
propositione.
Almaini ratio
proponitur
et reicitur.

6. Sed contra hanc sententiam ponitur propositio: Peccatum mortale non impedit dominium civile et verum dominium. Haec propositio licet sit determinata in Concilio Constantiae, tamen¹⁴ arguit Almainus, *Quarto*, dist. 15, qu. 2, ex Aliaco, quia tunc existens in peccato mortali et constitutus in extrema necessitate¹⁵ esset perplexus, quia tenetur comedere panem, et, si non habet dominium, accipit alienum. Ergo non potest evadere mortale. Sed hoc argumentum parum procedit, primum, quia¹⁶ neque Armachanus neque Wycliffe videntur loqui de dominio naturali, sed civili; secundo, negatur consequentia, et diceretur quod in casu necessitatis

¹V. 4; VULGATE also has *suum* after *argentum*.

²B has *autem* in place of *tamen*.

³B omits *Deus*.

⁴B has *autem* in place of *vero*.

⁵Vv. 19-20.

⁶B adds *ita*.

⁷V. 26; VULGATE has *et* instead of *ut*.

⁸B omits *ergo*.

⁹B continues: *alias esset filius: filii autem sunt propter imaginem patris, ergo, etc.*, as above.

¹⁰B omits *illo*.

¹¹Cap. 1, vv. 28-30; cap. 3, vv. 23-24.

¹²M has inserted *de contracti*. here; cf. p. 226, n. 17.

¹³B has simply *posset dicere quod barbari non erant in peccato mortali*.

¹⁴B has *probatur tamen. Primo arguit*.

¹⁵M continues *comedendi panem esset perplexus, quia ex una parte tenetur comedere panem, et ex altera si non, etc.*, as above. This seems an instance of M's tendency toward more symmetrical expressions.

¹⁶B omits *quia*.

posset alienum accipere; tertio, non est perplexus, quia potest paenitere. Et ideo aliter arguitur.

320 Primo, quia, si peccator non habet dominium civile, de quo videntur loqui, ergo nec naturale; consequens est falsum; ergo. Probo consequentiam, quia etiam dominium naturale est ex dono Dei, sicut civile, immo plus, quia civile videtur esse de iure humano. Ergo, si propter offensam Dei homo perderet dominium civile, eadem ratione¹ perderet etiam dominium naturale. Falsitas autem consequentis² probatur, quia non perdit dominium super proprios actus et super propria membra; habet enim peccator ius defendendi propriam vitam.

Ratio sive
probatio auc-
toris. I.

Secundo, Scriptura sacra saepe nominat reges illos, qui mali erant et II. peccatores, ut patet de Salomone, Achab, et aliis multis; non est autem rex, qui non est dominus; ergo.

Tertio, converto argumentum factum pro parte contraria: Do- III. minium fundatur in imagine Dei; sed homo est imago Dei³ per naturam, scilicet per potentias rationales; ergo non perditur per peccatum mortale. Minor probatur ex Augustino (lib. 9, *De Trinitate*) et ex⁴ doctoribus.

Quarto, David vocabat Saulem dominum suum et regem tempore, IV. quo persequabatur eum⁵ (*I Reg.*, 16, et⁶ aliis locis). Immo ipse⁷ David aliquando peccavit, nec propterea⁸ perdidit regnum.

321 Quinto (*Gen.*, 49⁹), "Non auferetur sceptrum de Iuda, nec dux de v. femore eius, donec veniat qui mittendus est," etc.; et tamen¹⁰ multi fuerunt mali reges; ergo.

Sexto, potestas spiritualis non perditur per peccatum mortale; ergo VI. nec civilis, quia multo minus videtur fundari in gratia quam spiritualis. Antecedens autem patet, quia presbyter malus consecrat Eucharistiam et malus episcopus sacerdotes, ut certum est; licet Wycliffe neget, concedit tamen Armachanus.¹¹

Vltimo,¹² nullo modo est verisimile, cum sit praeceptum oboedire VII. principibus (*ad Rom.*, 13¹³; et *I Pet.*, 2¹⁴: "Obedite praepositis vestris non tantum bonis, sed etiam dyscolis"¹⁵) et non capere alienum, quod voluerit Deus, quod esset ita incertum qui¹⁶ essent veri principes et domini.

Et in summa, haec est manifesta haeresis. Et, sicut Deus solem suum oriri facit super bonos et malos et pluit super iustos et iniustos,¹⁷ ita bona temporalia dedit bonis et malis. Nec disputatur eo, quod dubitetur, sed ut crimine ab uno, i. e., a tam amenti haeresi, discamus omnes haereticos.

¹B adds *ne*, probably through dittography.

²B omits *consequentis*.

³B omits *Dei*.

⁴M inserts *aliis*.

⁵B omits *eum*.

⁶M inserts *in*.

⁷B has *tempore* in place of *ipse*.

⁸B omits *propterea*.

⁹V. 10; VULGATE has *et* in place of *nec*.

¹⁰B has *tum* in place of *tamen*.

¹¹B adds *Item i. Pet. 2. Obedite praepositis vestris, non tantum bonis, sed etiam dyscolis*.

¹²S has *Septimo*, probably considering the summary of the arguments as the last argument and this one next to the last. Therefore, S also has *VIII* in the margin opposite *Et in summa*.

¹³Vv. 1-7.

¹⁴Vv. 13-18: "Subiecti igitur estote omni humanae creaturae. . . . Servi, subditi estote in omni timore dominis, non tantum bonis, sed etiam dyscolis."

¹⁵B omits *Obedite . . . dyscolis* here; see note 11, above.

¹⁶B has *quod*.

¹⁷B has *iustum et iniustum*.

Agitur iam de
secunda cau-
sa amittendi
dominii. Et
est quaestio,
an ratione
infidelitatis
amittatur do-
minium.
Respondet
auctor ali-
quot propo-
sitionibus.

Prop I.
Probatur ex
Scriptura.

Probatur ra-
tione.

Coroll.

Prop. II.

7. Sed restat: Vtrum saltem ratione infidelitatis perdat dominium. Et videtur quod sic, quia haeretici non habent dominium; ergo nec alii infideles, quia non videntur esse melioris condicionis. Antecedens autem patet ex cap. cum secundum leges,¹ De haereticis, Lib. VI, ubi cavetur quod bona haeticorum ipso iure sint² confiscata. Respondeo per propositiones. Prima: Infidelitas non est impedimentum, quominus aliquis sit verus dominus. Haec conclusio est S. Thomae (*Secunda Secundae*, qu. 10, art. 12).³ Et probatur etiam⁴ primo, quia Scriptura vocat reges aliquos infideles, ut Sennacherib et Pharaonem et multos alios reges. Item quia gravius peccatum est odium Dei quam infidelitas; sed per odium, etc. Item Paulus (*ad Rom.*, 13⁵) et Petrus⁶ (*I Pet.*, 2⁷) iubent praestare oboedientiam principibus, qui tunc erant omnes infideles, et servos oboedire dominis. Item Tobias iubebat reddi haedum⁸ a Gentilibus captum tanquam furtivum (*Tob.*, 2⁹); quod non esset, si Gentiles non haberent dominium. Item Joseph fecit totam terram Aegypti tributariam Pharaoni, qui erat infidelis (*Gen.*, 47¹⁰). Item ratione S. Thomae, quia infidelitas¹¹ non tollit nec ius naturale nec humanum; sed dominia sunt vel de iure naturali aut¹² humano; ergo non tolluntur dominia per defectum fidei. Et tandem iste est ita manifestus error, sicut praecedens.¹³ Ex quo patet quod nec a¹⁴ Saracenis nec a Iudaeis vel aliis infidelibus licet capere res, quas possident, per se loquendo, i. e., quia infideles sunt; sed est furtum vel rapina, non minus quam a Christianis.

8. Sed quia peculiaris difficultas est de haeresi, sit secunda propositio: Stando in iure divino, haeticus non amittit dominium bonorum. Haec est omnium et est nota. Cum enim amissio bonorum sit poena et nulla sit¹⁵ poena de lege divina pro isto statu, constat, stando in iure divino, non amitti bona propter haeresim. Item patet haec propositio ex prima. Nam si propter aliam infidelitatem non perditur dominium, ergo¹⁶ nec propter haeresim, cum nihil sit cautum specialiter de haeresi quantum ad hoc in iure divino.

9. Sed utrum de iure humano? Conradus quidem (¹⁷lib. I, qu. 7, con. 2 et 3) videtur tenere quod haeticus ipso facto perdit dominium bonorum suorum, ita quod in foro conscientiae cadit a dominio. Ex quo infert quod nec¹⁸ potest alienare et alienatio non tenet, si fiat. Probatur ex illo

¹*Sext.*, 5, 2, 19, which is an excerpt from POPE BONIFACE VIII, *Epist. ad inquisitores haereticae pravitatis*. ²B has *sunt*.

³The words in qu. 12, art. 2, are more to the point: "Respondeo dicendum quod, sicut supra (qu. 10, art. 10) dictum est, infidelitas secundum se ipsam non repugnat dominio eo, quod dominium introductum est de iure gentium, quod est ius humanum; distinctio autem fidelium et infidelium est secundum ius divinum, per quod non tollitur ius humanum."

⁴S omits *etiam*.

⁵Vv. 1-7.

⁶S omits *Petrus*.

⁷Vv. 13-18; see p. 225, n. 14.

⁸B has *agnum*. *Haedum* may be an improvement of M's, to conform with the VULGATE.

⁹Vv. 20-22: "Unde factum est ut haedum caprarum accipiens detulisset domi; cuius cum vocem balantis vir eius audisset, dixit: 'Videte, ne forte furtivus sit; reddite eum dominis suis, quia non licet nobis aut edere ex furto aliquid aut contingere.'"

¹⁰Vv. 20-21: "Emit igitur Joseph omnem terram Aegypti, vendentibus singulis possessiones suas prae magnitudine famis. Subiecitque eam Pharaoni," etc. ¹¹B has *fides*.

¹²M has *vel*.

¹³B adds *et est haeticum*.

¹⁴S omits *a*.

¹⁵B has *est*.

¹⁶B omits *ergo*.

¹⁷M inserts *de contractibus*; cf. p. 224, n. 12.

¹⁸S has *non*.

cap. *cum secundum leges*,¹ ubi Papa² praemittit quod propter aliqua crimina secundum leges eo ipso suarum rerum dominium auctores delictorum perdunt, et Papa determinat quod idem sit pro crimine haeresis. Et idem videtur tenere Ioannes Andreae in dicto cap. *cum secundum leges*.¹ Et videtur haberi ex l. 4,³ C., De haereticis,⁴ ubi interdictur haereticis venditio et donatio et omnis contractus bonorum suorum. Item leges obligant in foro conscientiae, ut docet S. Thomas⁵ (*Prima Secundae*, qu. 96, art. 4⁶).

10. Sed pro declaratione sit tertia propositio: Haereticus a die commissi criminis incurrit confiscationem⁷ bonorum. Ita tenent communiter doctores, et est determinatio *Directorio* (lib. 3, tit. 9⁸), et⁹ *Summa Baptista*¹⁰ in verbo *absolutio*,¹¹ § 17,¹² et videtur diffinitum in illo cap. *cum secundum leges*¹ et in dicta l. 4,³ C., De haereticis.⁴ Prop. III.

325 11. Quarta propositio: Nihilominus quamvis constet de crimine, ante tamen condemnationem¹³ non licet fisco occupare bona haereticorum. Haec est etiam¹⁴ omnium et est determinatio dicti cap. *cum secundum leges*.¹ Immo esset contra ius divinum et naturale, ut poena daretur¹⁵ executioni, antequam quis condemnatur.¹⁶ Prop. IV.

12. Sequitur ex tertia conclusione quod, condemnatione facta etiam post mortem, retroagitur confiscatio ad tempus commissi criminis, ad quamcumque pervenerit potestatem. Hoc corollarium est etiam omnium et particulariter Panormitani in cap. fin., De haereticis.¹⁷ Coroll. 1.

¹*Sext.*, 5, 2, 19, which is an excerpt from POPE BONIFACE VIII, *Epist. ad inquisitores haereticae pravitatis*. ²B has *propterea* in place of *Papa*.

³*Cod.*, 1, 5, 4, §3, which is an excerpt from EMPERORS HONORIUS VII and THEODOSIUS II, *Epist. ad senatores*. The opening word of this law is *Manichaeos*.

⁴The full title is *De haereticis et Manichaeis et Samaritis*.

⁵B omits *ut docet S. Thomas*.

⁶"Respondeo dicendum quod leges positae humanitus vel sunt iustae vel iniustae. Si quidem iustae sint, habent vim obligandi in foro conscientiae a lege aeterna, a qua derivantur, secundum illud *Proverb.* 8, v. 15: 'Per me reges regnant et legum conditores iusta decernunt.'"

⁷M has *poenam confiscationis*.

⁸NICOLAUS EYMERICI, *Directorium inquisitorum*, pars iii, qu. cix (De confiscatione): "Tamen hic est diligenter considerandum, quod tales (i. e., heretics, who later become repentant) vel poenitent ante sententiam diffinitivam, qua traduntur ut impenitentes haeretici curiae seculari, vel post. Si post, cum eo facto, quod ut haeretici impenitentes traduntur per sententiam, bona sunt ipso iure confiscata, iuxta cap. *vergentis*, Extra, De haereticis."

⁹S adds *in*.

¹⁰B has *Baptistiana*.

¹¹BAPTISTA DE SALIS, *Summa casuum conscientiae*, s. v. *absolutio*, I, fol. iiiii, col. 1: "Idem tenet Dir. (lib. iii, tit. ix) ubi quaerit a quo tempore ista bona damnatorum propter haeresim vel huiusmodi pertineant ad fiscum, et dicit quod a die commissi criminis." Here BAPTISTA quotes several laws (l. *Manichaeos*, etc.) and continues: "ex quo consecuta est condemnatio effectus huius damnationis trahitur ad diem commissi criminis et alienatio est ei interdicta."

¹²B, M, and S have § 17, and it is possible that in some early edition of the *Summa* the matter under *absolutio* was divided into sections. At any rate the discussion under *absolutio* falls into three main divisions. The passage referred to above is to be found in the first of these.

¹³M has *condemnationem tamen*.

¹⁴S omits *stiam*.

¹⁵M has *mandaretur*.

¹⁶S has *condemnaretur*.

¹⁷I. e., on *Decret.* 5, 7, 16. The reference is to §4, which refers back to the commentary on cap. *vergentis* (i. e., *Decret.* 5, 7, 10), where the opinion is more explicit.

Coroll. 2.

13. Secundo, sequitur quod venditiones, donationes, et omnis alia alienatio bonorum a die commissi criminis sunt invalidae. Itaque, facta condemnatione, omnes rescinduntur a fisco et bona capiuntur ab eodem fisco,¹ etiam pretio non restituto emptoribus. Etiam haec est omnium et nominatim² Panormitani,³ ubi supra, et patet ex dicta⁴ l. 4,⁵ C., De haereticis.⁶

Prop. V.

14. Quinta propositio: Nihilominus haereticus est dominus in foro 326 conscientiae, antequam condemnetur. Haec propositio videtur contra

Prob. 1.

Conradum et *Directorium*⁷ et Ioannem Andreae, sed tamen est propositio Sylvestri in verbo *haeresis*, I, § 8.⁸ Et tenet illam et disputat ad longum Adrianus, *Quotlibetorum* 6, qu. 2. Et idem videtur dicere Caietanus⁹ in *Summa*, in verbo *poena*. Et probatur primo, quia hoc ipsum, scilicet privari in foro conscientiae, est poena; ergo nullo modo debet infligi ante condemnationem. Nec satis scio an ius humanum hoc posset facere.

Prob. 2.

Item probatur manifeste, quia, ut patet in illo cap. *cum secundum leges*,¹⁰ eodem modo sunt confiscata bona ipso facto propter incestas nuptias; item, si mulier ingenua rapta nubat raptori. Immo, si quis de mercibus importatis non solvat vectigalia consueta, ipso facto bona confiscantur; item, qui illicitas merces exportat, ut arma, ferrum, ad Saracenos, ut patent omnia ista in dicto cap. *cum secundum leges*,¹⁰; et C., De incestis nuptiis,¹¹ l. *cum ancillis*,¹²; et¹³ C., De raptu virginum,¹⁴ l. una¹⁵; et De Judaeis,¹⁶ cap. *ita quorundam*¹⁷; et ff., De vectigalibus,¹⁸ l. fin.¹⁹ Immo Papa in dicto cap. *cum secundum leges*,¹⁰ expresse dicit quod, sicut est confiscatio in illis casibus, 327 ita vult quod fiat propter haeresim. Sed nullus negat quin incestuosus et raptor et deferens arma Saracenis et non solvens vectigalia—quin²⁰

¹B omits et . . . fisco. . .²B omits nominatim.³See p. 227, n. 17.⁴M omits dicta.⁵Cod., I, 5, 4, §3, which is an excerpt from EMPERORS HONORIUS VII and THEODOSIUS II, *Epist. ad senatores*. Cf. p. 227, n. 3.⁶The full title is *De haereticis et Manichaeis et Samaritis*.⁷See p. 227, n. 8.⁸¶3: "Licet Ecclesia videatur dare generale auctoritatem omnibus expoliandi eos, tamen satis videtur totum quod non fiat nisi speciali edicto vel principis vel Ecclesiae." And ten lines farther on: "Bona conscientia retinere potest (i. e., one guilty of homicide) dicta bona et fructibus uti pro necessitate donec sententia saltem generalis sequatur, ut etiam tenet Directorii lib. 3, tit. 9, qui etiam dicit quod dicta bona damnatorum propter haeresim vel huiusmodi ad fiscum pertinentia die commissi criminis."⁹B has videtur Caieta.¹⁰*Sext.*, 5, 2, 19, which is an excerpt from POPE BONIFACE VIII, *Epist. ad inquisitores haereticae pravitatis*.¹¹The full title is *De incestis et inutilibus nuptiis*.¹²Cod., 5, 5, 3, which is an excerpt from EMPEROR CONSTANTINE V, *Epist. ad Patroclum*.¹³M omits et.¹⁴The full title is *De raptu virginum seu viduarum nec non sanctimonialium*.¹⁵Cod., 9, 13, 1, which is an excerpt from EMPEROR JUSTINIAN III, *Epist. ad Hermogenem magistrum officiorum*.¹⁶The full title is *De Judaeis, Sarracenis, et eorum servis*.¹⁷*Decret.*, 5, 6, 6, which is an excerpt from POPE ALEXANDER III, *Epist. ex concilio Lateranensi*.¹⁸The full title is *De publicanis et vectigalibus et commissis*.¹⁹*Dig.*, 39, 4, 16, which is an excerpt from MARCIAN, *De delatoribus*.²⁰See page 205 for explanation of this repetition.

maneat verus dominus bonorum suorum in foro conscientiae. Quare ergo ¹non etiam haereticus? Et ipse Conradus etiam eodem modo dicit de illis casibus et de haeretico. Et gravius esset cogere hominem iam emendatum ab haeresi restituere bona fisco.

15. Sequitur corollarium quod haereticus potest licite vivere ex bonis suis.

Notanda quatuor haec corollaria.

16. Secundo, sequitur item quod titulo gratioso potest transferre bona sua, puta donando.

17. Sequitur tertio quod titulo oneroso, puta vendendo aut dando in dotem, si crimen posset venire in iudicium, non licet transferre. Patet, quia decipit emptorem et ponit eum in periculo perdendi et rem et pretium, si venditor condemnatur.

18. Ultimo, sequitur quod, si re vera non esset periculum confiscationis, posset etiam licite titulo oneroso alienare, ut, si quis² esset haereticus in Germania, Catholicus posset licite emere ab illo. Grave enim³ esset quod non posset licite in aliqua civitate Lutheranorum, si quis est Catholicus, emere agrum ab haeretico nec vendere illi; quod tamen necessario esset dicendum, si omnino haereticus non est dominus in foro conscientiae.

Infertur conclusio principalis.

19. Ex omnibus his sequitur conclusio quod barbari, nec propter peccata alia mortalia nec propter peccatum infidelitatis, impediuntur⁴ quin sint veri domini, tam publice quam privatim, nec hoc titulo possunt a Christianis occupari bona et terrae illorum, ut late et eleganter deducit Caietanus (*Secunda Secundae*, qu. 66, art. 8^b).

Caietanus.

20. Restat, an ideo non essent⁵ domini, quia sunt insensati vel amentes. Et circa hoc dubium est⁷ an ad hoc, ut aliquis sit capax domini, requiratur usus rationis. Et Conradus quidem (lib. I, qu. 6), ponit conclusionem quod dominium convenit creaturae irrationali,⁸ tam sensibili quam insensibili. Probat, quia dominium nihil aliud est quam ius utendi re in usum suum. Sed bruta habent ius super herbas et plantas (*Gen.*, 1⁹): "Ecce dedi vobis omnem herbam afferentem semen super terram, et universa ligna, quae habent in semetipsis sementem generis sui, ut sint vobis in escam, et cunctis animantibus terrae." Item astra habent ius illuminandi (*Gen.*, 1¹⁰): "Posuit ea in firmamento caeli, ut lucerent ac praessent diei ac nocti." Et leo habet dominium super omnia animalia gressibilia, unde et rex animantium vocatur. Et aquila est domina inter volucres, unde (*Psalm.*, 103¹¹) "Herodii domus dux est eorum." Eiusdem sententiae

Quaestio de tertia causa, an videlicet Indi idcirco careant dominio, quia carent usu rationis. Opinio Conradi.

Et Sylvestri.

¹B has non convenienter dicunt de haeretico? See p. 198.

²B has qui in place of si quis.

³B omits enim.

⁴B has non impediuntur.

⁵Vol. IX, page 94, of the edition used: "Quidam autem infideles nec de iure nec de facto subsunt secundum temporalem iurisdictionem principibus Christianis, ut si inveniuntur pagani qui nunquam imperio Romano subditi fuerunt, terras inhabitantes in quibus Christianum nunquam fuit nomen. Horum namque domini, quamvis infideles, legitimi domini sunt, sive regali sive politico regimine gubernentur; nec sunt propter infidelitatem a dominio suorum privati; cum dominium sit ex iure positivo et infidelitas ex divino iure, quod non tollit ius positivum, ut superius in qu. 10, art. 10, habitum est. Et de his nullam scio legem quoad temporalia." ⁶M has Sed restat mō dubium an ideo non sint.

⁷M has est dubium.

⁸B has irrationali.

⁹Vv. 29-30.

¹⁰Vv. 17-18: "Et posuit eas (sc. stellas) in firmamento caeli, ut lucerent super terram, et praessent diei ac nocti," etc. ¹¹V. 17.

est Sylvester in verbo *dominium*, in principio,¹ ubi dicit quod "elementa dominantur invicem."

Respondet
auctor pro-
positionibus
aliquot.
I Prop.
Prob. 1.
Reicitur si-
mul Conra-
di et Syl-
vestri opinio.

Sed respondeo per propositiones.

Prima: Creaturae irrationales non possunt habere dominium. Patet, quia dominium est ius, ut fatetur² etiam Conradus. Sed creaturae irrationales non possunt habere ius. Ergo nec dominium. Probatur minor, quia non possunt pati iniuriam; ergo non habent ius. Probatur assump- 330
tum, quia qui prohiberet lupum aut leonem a praeda vel bovem a pastu, non faceret ei iniuriam, nec qui claudit fenestram, ne sol illuminet, facit iniuriam soli. Et confirmatur, quia, si bruta habent dominium, ergo qui tolleret herbam cervo,³ faceret furtum, quia caperet alienum, invito domino.

Prob. 2.

Item, ferae non habent dominium sui. Ergo multo minus aliarum rerum. Assumptum probatur, quia licet eas impune interficere etiam animi gratia. Vnde etiam Philosophus (primo *Politicorum*⁴) ait⁵ quod venatio ferarum est iusta et naturalis.

Prob. 3.

Item, ipsae ferae et omnia irrationalia sunt hominis per proprietatem⁶ multo magis quam servi. Ergo, si servi non possunt habere aliquid suum, multo minus irrationalia.

Et confirmatur propositio auctoritate S. Thomae (*Prima Secundae*, qu. 1, art. 1 et 2, et qu. 6, art. 2, et *Contra Gentiles*,⁷ cap. 110⁸). Sola creatura rationalis habet dominium sui actus, quia, ut ipse etiam dicit (*Prima Parte*,⁹ qu. 82. art. 1, ad tertium¹⁰), per hoc aliquis est dominus suorum actuum, quia potest hoc vel illud eligere; unde etiam, ut ibidem dicit, appetitus circa ultimum finem non sumus domini. Si ergo bruta non habent dominium suorum actuum, ergo nec aliarum rerum. Et licet dis- 331
putatio videatur de nomine, certe hoc est valde improprie loqui et praeter communem modum loquendi tribuere dominium irrationalibus. Non enim dicimus aliquem esse dominum, nisi eius, quod situm est in sua facultate. Ita enim¹¹ loquimur: "Non est in mea facultate," "Non est in mea potestate," quando non sum dominus. Bruta autem cum non moveant se, sed potius moveantur, ut S. Thomas ait (*Prima Secundae*,¹² ubi supra), eadem ratione nec habent dominium.

Ratio Syl-
vestri re-
fellitur.

Nec valet, quod Sylvester dicit, quod dominium aliquando non dicit ius, sed solam potentiam, et hoc modo ignis habet dominium in aquam. Si enim hoc satis est ad dominium, ergo latro habet dominium ad inter-

¹I. e., before § 1: "Et sic elementa invicem dominantur vicissim."

²S has *faretur*.

³B has *a cervo*.

⁴Cap. 8.

⁵B and S omit *ait*.

⁶M has *sunt sub hominis potestate*.

⁷S adds *lib. 3*.

⁸Lib. 3: "Corpora enim et omnia quae ratione carent aguntur tantum, et non agunt seipsa; non enim sui actus dominium habent."

⁹B has *prima primae*.

¹⁰"Ad tertium dicendum quod sumus domini nostrorum actuum, secundum quod possumus hoc vel illud eligere. Electio autem non est de fine, sed 'de his, quae sunt ad finem,' ut dicitur in tertio *Ethicorum*. Unde appetitus ultimi finis non est de his, quorum domini sumus."

¹¹M has *Nam Ita*.

¹²"Illa ergo, quae rationem habent, seipsa movent ad finem, quia habent dominium suorum actuum per liberum arbitrium, quod est 'facultas voluntatis et rationis.' Illa vero, quae ratione carent, tendunt in finem per naturalem inclinationem, quasi ab alio mota, non autem a seipsis."

ficiendum hominem, quia habet potentiam ad hoc, et fur habet potentiam ad capiendum pecuniam. Quod autem dicit astra dominari et leonem esse regem, certum est dictum¹ metaphorice et per translationem.

332 21. Sed potest videri dubium de puero ante usum rationis, an possit esse dominus, quia videtur nihil differre ab irrationalibus. Et Apostolus (*ad Gal.*, 4²), "Quanto tempore heres parvulus est, nihil differt a servo"; sed servus non est dominus; ergo, etc. Sed³ sit secunda propositio: Pueri ante usum rationis possunt esse domini. Hoc patet, quia possunt pati iniuriam; ergo habent ius rerum; ergo et dominium, quod nihil aliud est quam ius. Item bona pupillorum non sunt in bonis tutorum, et habent dominos, et non alios⁴; ergo pupillos. Item pueri sunt haeredes. Sed haeres est, qui succedit in ius defuncti et qui est dominus haereditatis (*l. cum heres*,⁵ ff., De diversis temporalibus praescriptionibus,⁶ et *Inst.*, De heredum qualitate et differentia, § fin.⁷). Item diximus quod fundamentum domini est imago Dei, quae adhuc est in pueris, et Apostolus eodem loco (*ad Gal.*, 4²): "Quanto tempore heres parvulus est, nihil differt a servo, cum sit dominus omnium." Nec est idem de creatura irrationali, quia puer non est propter alium, sed propter se, sicut est brutum.

Dubium de puero, cui ante rationis usum non videtur convenire dominium.

II Prop.
Prob. 1.
Prob. 2.
Prob. 3.

Prob. 4.

333 22. Sed de amentibus quid? Dico de perpetuo amentibus, qui⁸ nec habent nec est spes habituros⁹ usum rationis. Sitque¹⁰ tertia propositio: Videtur adhuc quod possint esse domini, quia possunt pati iniuriam, ergo habent ius. Sed hoc remitto ad iurisconsultos, utrum possint habere dominium civile.

III Prop.

23. Et¹¹ quicquid sit de hoc, sit quarta¹² propositio: Nec ex hac parte impediuntur barbari ne sint veri domini. Probatur, quia secundum rei veritatem non sunt amentes, sed habent pro suo modo usum rationis. Patet, quia habent ordinem aliquem in suis rebus, postquam habent civitates, quae ordine constant, et habent matrimonia distincta, magistratus, dominos, leges, opificia, commutationes, quae omnia requirunt usum rationis; item religionis speciem. Item non errant¹³ in rebus, quae aliis sunt evidentes, quod est indicium usus rationis. Item Deus et natura non deficiunt in necessariis pro magna parte speciei. Praecipuum autem in 334 homine est ratio, et frustra est potentia, quae non reducitur ad actum. Item fuissent sine culpa sua tot millibus annorum extra statum salutis, cum essent nati in peccato et non haberent baptismum nec usum rationis ad quaerendum necessaria ad salutem. Vnde, quod videantur tam insensati et hebetes, puto maxima ex parte venire ex mala et barbara educatione,

IV Prop.
Barbari in Novo Orbe non omnino carent ratione.

¹M has *hoc dictum esse*.

²V. 1.

³M has *De hoc* in place of *Sed*.

⁴B omits *et non alios*. This may be an example of M's tendency to amplify.

⁵*Dig.*, 44, 3, 11, which is an excerpt from PAPINIAN, *Responsa*.

⁶The full title is *De diversis temporalibus praescriptionibus et de accessionibus possessionum*.

⁷*Inst.*, 2, 19, 7.

⁸B has *quod*, M has *est*, which is corrected in M's Errata to *qui*, and S has *qui*, which is probably what appeared in the manuscripts. The abbreviations for *qui* and *quod* (see p. 238, n. 4, and p. 195), may easily be confused and this may account for the *quod* in B, a mistake which is all the more easy to make because of the preceding *dico*.

⁹S has *quod habituri sint* in place of *habituros*, which appears in B and M, although *habituros* is corrected in M's Errata to *habituri*.

¹⁰S has *Sit* simply.

¹¹S omits *et*.

¹²B has *sit ad propositum*. *Quarta*, etc.

¹³M has *erant*.

cum etiam apud nos videamus multos rusticorum parum differentes a brutis animantibus.

Conclusio
principalis
ex dictis
collecta.

24. Restat ergo ex omnibus dictis quod sine dubio barbari erant et publice et privatim ita veri domini, sicut Christiani; nec hoc titulo potuerunt spoliari aut principes aut privati rebus suis, quod non essent veri domini. Et grave esset negare illis, qui nihil iniuriae unquam fecerunt, quod concedimus Saracenis et Iudaeis, perpetuis hostibus religionis Christianae, quos non negamus habere vera dominia rerum suarum, si alias non occupaverunt terras Christianorum.

Resp. ad
arg. pro par-
te negativa
positum supra
numeri 4,
ubi exponitur
locus Aristot-
elis, primo
Politico.

Superest respondere ad argumenta¹ in contrarium, ubi arguebatur 335
quod isti videntur servi a natura, quia parum valent ratione ad regendum
etiam se ipsos. Ad hoc respondeo quod certe Aristoteles² non intellexit
quod tales, qui parum valent ingenio, sint natura alieni iuris et non
habeant dominium et sui et aliarum rerum; haec enim est servitus civilis
et legitima, qua nullus est servus a natura. Nec vult Philosophus quod,³
si qui sunt natura parum mente validi, quod liceat occupare⁴ patrimonium
illorum et illos redigere in servitutem et venales facere; sed vult docere
quod a natura est in illis necessitas, propter quam⁵ indigent ab aliis regi
et gubernari, et bonum est illis subdi aliis, sicut filii indigent subici paren-
tibus ante adultam aetatem, et uxor viro. Et quod haec sit intentio
Philosophi, patet, quia eodem modo dicit quod natura sunt aliqui domini,
scilicet qui valent intellectu. Certum est autem quod non intellegit quod
tales possent sibi arripere imperium in alios illo titulo, quod sint sapien-
tiores, sed quia natura habent facultatem, ut possint imperare et regere. 336
Et sic, dato quod isti barbari sint ita inepti et hebetes, ut dicitur, non ideo
negandum est habere verum dominium, nec sunt in numero servorum
civilium habendi. Verum est quod ex hac ratione et titulo posset oriri
aliquod ius ad subiciendum eos, ut infra dicemus. Restat⁶ conclusio certa
quod, antequam Hispani ad illos venissent, illi erant veri domini, et publice
et privatim.

¹S has *argumentum*.

²*Politica*, lib. 1, cap. 4 et seqq.; see above, p. 222.

³M and S omit this *quod*, whereas they usually omit the second *quod*, if any. For this repetition of *quod*, see p. 204.

⁴Here M inserts *bona et*, an example, I take it, of M's tendency to amplify.

⁵B has *quia* in place of *propter quam*.

⁶M adds *nunc* here.

SECTIONIS SECVNDAE,

*De titulis non legitimis, quibus barbari Novi Orbis venire potuerint
in dicionem Hispanorum,*

SVMMA.¹

1. Imperator non est totius orbis dominus.
2. Imperator, licet esset dominus mundi, non ob id posset occupare provincias barbarorum et constituere novos dominos et veteres deponere vel vectigalia capere.
3. Papa non est dominus civilis aut temporalis totius orbis, loquendo proprie de dominio et potestate civili.
4. Summus Pontifex, quamvis haberet potestatem secularem in mundum, non posset eam dare principibus saecularibus.
5. Papa habet potestatem temporalem in ordine ad spiritualia.
6. Papa nullam potestatem temporalem habet in barbaros Indos neque in alios infideles.
- 338 7. Barbari, si nolint recognoscere dominium aliquod Papae, non ob id potest eis bellum inferri et illorum bona occupari.
8. Barbari, an priusquam aliquid audissent de fide Christi, peccarent peccato infidelitatis eo, quod non crederent Christo.
9. Ignorantia ad hoc, quod alicui imputeretur et sit peccatum, vel vincibilis, quid requiratur. Et quid de ignorantia invincibili.
10. Barbari an ad primum fidei Christianae nuntium teneantur credere, ita ut peccent mortaliter non credentes Christi Evangelium, solum per simplicem annuntiationem, etc.
11. Barbaris si simpliciter fides annuntiaretur et proponeretur, et nollent statim recipere, hac ratione non possent Hispani illis bellum inferre neque iure belli contra eos agere.
12. Barbari rogati et admoniti ut audiant pacifice loquentes de religione, quomodo, si nolint, non excusentur a peccato mortali.
13. Barbari quando tenerentur recipere Christi fidem sub mortalis peccati poena.
14. Barbaris an hactenus ita proposita et annuntiata fuerit fides Christiana, ut teneantur credere sub novo peccato, non satis liquet secundum auctorem.
- 339 15. Barbaris, etsi quantumcumque fides annuntiata probabiliter et sufficienter fuerit et noluerint eam recipere, non tamen ob id licet eos bello persequi et bonis suis spoliare.
16. Principes Christiani non possunt, etiam auctoritate Papae, coërcere barbaros a peccatis contra legem naturae nec ratione illorum eos punire.

Supposito ergo quod sunt vel² erant veri domini, superest videre quo titulo potuerint Hispani venire in possessionem illorum vel³ illius regionis.

Et primo, referam titulos, qui possint praetendi, sed non idonei⁴ nec legitimi.

Secundo, ponam alios titulos legitimos, quibus potuerint barbari venire in dicionem Hispanorum.

Statuit auctor adferre titulos, tam legitimos quam non legitimos, quibus Hispani venerint in possessionem regionis barbarorum.

¹In B and M this heading is omitted and propositions 1-16 are listed immediately after proposition 24 as propositions 25-40. See p. 217, n. 3, and p. 218, n. 1.

²M omits *sunt vel*.

³B omits *illorum vel*.

⁴M has the more complete expression *sed qui non sint idonei*.

Sunt autem septem tituli, qui possunt praetendi, sed non idonei, septem¹ autem alii vel octo iusti et legitimi.

Primus
titulus non
legitimus.

Primus ergo titulus posset esse quod Imperator est dominus mundi; et sic, dato quod tempore praeterito fuisset aliquid vitii, iam² esset purgatum in Caesare Imperatore Christianissimo. Nam, dato quod ita sit quod sint veri domini, possent habere superiores dominos, sicut inferiores principes habent regem et aliqui reges habent Imperatorem. Quare³ in 340 eandem rem possunt plures habere dominium; unde est⁴ illa distinctio iuristarum trita,⁵ dominium altum bassum, directum utile, merum mixtum. Dubitatur ergo utrum isti haberent dominum superiorem. Et quia non potest esse dubium nisi de Imperatore aut de Papa,⁶ de istis dicemus.

Quaestio an
Imperator sit
totius orbis
dominus.
Pro parte
affirmativa.

Arg. I. II.

Arg. III.

Et videtur primo quod⁷ Imperator sit totius orbis dominus et per consequens etiam barbarorum. Primum, ex communi appellatione, quam tribuunt Imperatori, Divo Maximiliano aut Carolo semper Augusto, "orbis domino." Item, "Exiit edictum a Caesare Augusto, ut describeretur universus orbis" (*Luc.*, 2⁸); sed non debent esse peioris conditionis Imperatores Christiani; ergo.⁹ Item, Dominus videtur iudicasse Caesarem esse verum dominum Iudaeorum. "Reddite," inquit, "quae sunt Caesaris, Caesari," etc. (*Luc.*, 20¹⁰). Non videtur autem quod ius posset habere nisi quia Imperator. Ergo. De hoc Bartolus in Extravaganti *Ad reprimendum*,¹¹ quae est Henrici VII, tenet expresse quod "Imperator de iure est totius orbis dominus."¹² Et idem tenet glossator in cap. *per venerabilem*, Qui filii sint legitimi.¹³ Et idem ad longum glossator in cap. *venerabilem*, De electione.¹⁴

Bartoli et
glossatorum
sententia
pro parte
affirmativa.

Prob. 1.

Et probant primo, 8, qu. 1, can. *in apibus*,¹⁵ ubi Hieronymus¹⁶ dicit quod 341 in apibus unus est rex et in mundo unus Imperator. Item ff., De lege Rhodia, l. *deprecatio*,¹⁷ ubi Imperator Antoninus dicit: "Ego quidem mundi dominus."¹⁸ Et in l. *bene a Zenone*, C., De quadriennii praescriptione,¹⁹ "omnia principis esse intelleguntur."

Prob. 2.

Et posset etiam probari, quia Adam primo et postea Noë videntur fuisse domini orbis (*Gen.*, 1): "Faciamus hominem ad imaginem et similitudinem nostram, ut praesit piscibus maris et volatilibus caeli, universaeque terrae," etc., et infra, "Crescite, et multiplicamini, et replete terram, et subjicite eam," etc. Et idem in sententia dictum est Noë (*Gen.*, 8). Sed illi habuerunt successores. Ergo.

¹B has *sempit.*

²S has *tam.*

³B has *unde.*

⁴B omits *est*, which is not really necessary here.

⁵B omits *trita.*

⁶M inserts *ideo* here.

⁷B has *Et primo de Imperatore. Et videtur quod*, etc.

⁸V. I.

⁹B omits *ergo.*

¹⁰V. 25; cf. also *Matth.*, cap. 22, v. 21.

¹¹§ 8.

¹²Bartolus adds, "licet de facto ei non obediatur."

¹³*Decret.*, 4, 17, 13.

¹⁴*Decret.*, 1, 6, 34, which is an excerpt from POPE INNOCENT III, *Epist. ad Ducem Caringiae*.

¹⁵*Decr.*, 2, 7, 1, 41, which is an excerpt from ST. GREGORY, *Ad rusticum monachum, epist. 4*.

¹⁶VICTORIA has *Hieronymus* here, following the *Editio Romana* of the CORPUS IURIS CANONICI, which attributes this to ST. JEROME, but the passage in question is in ST. GREGORY. See n. 15.

¹⁷*Dig.*, 14, 2, 9, which is an excerpt from VOLUSIUS MAECIAN, *Ex lege Rhodia*; the title of the law given above is a translation of *ἀξίωσις*.

¹⁸"Εγὼ μὲν τοῦ κόσμου κύριος, ὁ δὲ νόμος τῆς θαλάσσης."

¹⁹*Cod.*, 7, 37, 3, §1a, which is an excerpt from EMPEROR JUSTINIAN III, *Epist. ad Florum et al.*

Item quia non est credendum quin Deus instituerit in orbe optimum Prob. 3.
genus gubernationis (*Psalm.* 103¹): "Omnia in sapientia fecisti." Sed
illud est monarchia, ut S. Thomas egregie disputat² (*De regimine principum*,
lib. 1, cap. 2) et videtur sentire Aristoteles (tertio *Politicorum*³). Ergo
videtur quod ex institutione divina debeat esse unus Imperator in orbe.

Item ea, quae sunt praeter naturam, debent imitari naturalia. Sed Prob. 4.
in naturalibus est semper unus rector, ut⁴ in corpore cor, in anima una
ratio. Ergo ita debet esse in orbe unus rector, sicut unus Deus.

1. Sed haec opinio est sine aliquo fundamento. Et ideo sit prima
342 conclusio: Imperator non est dominus totius orbis. Probatur, quia
dominium non potest esse nisi vel iure naturali vel divino vel humano; sed
nullo tali est dominus orbis; ergo. Minor probatur, primum de iure natu-
rali, quia, ut bene dicit S. Thomas (*Prima Parte*, qu. 92, art. 1, ad secun-
dum,⁵ et qu. 96, art. 4⁶), in iure naturali homines liberi sunt, excepto dominio
paterno et maritali—de iure enim naturali pater habet dominium supra filios
et maritus in uxorem—; ergo nullus est qui iure naturali habeat imperium
orbis. Et, sicut etiam dicit S. Thomas⁷ (*Secunda Secundae*, qu. 10, art. 10⁸),
"dominium et praelatio introducta sunt iure humano"; ergo non sunt de iure
naturali. Nec esset maior ratio quare hoc dominium conveniret Germanis
magis quam Gallis. Et Aristoteles (primo *Politicorum*⁹), dicit quod¹⁰ duplex
est potestas: una familiaris, ut patris ad filios et¹¹ viri ad uxorem, et haec
est naturalis; alia est civilis, quae licet a natura quidem habeat ortum; et
ideo potest dici de iure naturae, ut S. Thomas¹² (*De regimine principum*, lib.
1, cap. 1), est enim homo animal civile, non tamen natura, sed lege con-
stitutata est.

De iure autem divino ante adventum Christi Redemptoris non
legimus fuisse Imperatores dominos¹³ mundi, quamvis glossa illa Bartoli in
343 Extravaganti *Ad reprimendum* adducat de Nabuchodonosor (*Dan.*, 9¹⁴),
de quo dicitur, "Tu rex regum es; Deus caeli regnum, fortitudinem,
gloriam, et imperium dedit tibi, et omnia in quibus habitarent filii ho-
minum." Sed certum est quod nec Nabuchodonosor¹⁵ accepit imperium
specialiter a Deo, sed eo modo quo alii principes¹⁶ (*ad Rom.*, 13¹⁷): "Omnis

Reicitur Bar-
toli sententia
et ponitur
I Prop.
Probatur non
competere
dominium
totius orbis
Imperatori
iure naturali.

Probatur nec
iure divino
Imperatorem
esse totius
orbis domi-
num.
Prob. I.
Quomodo
intellegendus
locus
Danielis.

¹V. 24.

²M has dicit.

³Cap. 18.

⁴S omits ut; B adds in apibus, perhaps having in mind *De cr.*, 2, 7, 1, 41, quoted above.

⁵After stating that there are two kinds of *subiectio*, *servilis* and *oeconomica* or *civilis*, he continues:
"Est autem subiectio oeconomica vel civilis, secundum quam praesidens utitur subiectis ad eorum
utilitatem et bonum. Et ista subiectio fuisset etiam ante peccatum. . . . Et sic ex tali subiectione
naturaliter femina subiecta est viro, quia naturaliter in homine magis abundat discretio rationis. Nec
inaequalitas hominum excluditur per innocentiae statum, ut infra dicitur (qu. 96, art. 3)."

⁶"Respondeo dicendum quod dominium accipitur dupliciter. Uno modo, secundum quod oppo-
nitur servituti, et sic dominus dicitur, cui aliquis subditur ut servus. Alio modo accipitur dominium,
secundum quod communiter refertur ad subiectum qualitercumque, et sic etiam ille, qui habet officium
gubernandi et dirigendi liberos, dominus dici potest. Primo ergo modo accepto dominio, in statu
innocentiae homo homini non dominaretur, sed secundo modo accepto dominio, in statu innocentiae
homo homini dominari potuisset."

⁷B omits S. Thomas.

⁸"Considerandum est quod dominium et praelatio introducta sunt ex iure humano; distinctio
autem fidelium et infidelium est ex iure divino; ius autem divinum, quod est ex gratia, non tollit ius
humanum, quod est ex naturali ratione."

⁹Capp. 1 et seqq.

¹⁰B and S omit dicit quod.

¹¹B omits et, but has comma instead.

¹²S adds dicit here.

¹³B has imperatorem et dominum.

¹⁴Not in Lib. 9, but almost verbatim in Lib. 2, vv. 37-38.

¹⁵B has Nabuchodossor.

¹⁶M adds ut Paulus dicit.

¹⁷V. 1: "Omnis anima potestatibus sublimioribus subdita sit: non est enim potestas nisi a Deo."

potestas a Domino Deo est"; et (*Prov.*, 8¹): "Per me reges regnant, et legum conditores iusta decernunt." Nec etiam habuit imperium iure in totum orbem, ut putat Bartolus, nam Iudaei non erant ei subiecti² iure.

Prob. 2.

Quomodo
Deus dicatur
tradidisse
Romanis
imperium.

Item ex hoc ipso patet quod nullus erat de iure divino dominus totius mundi, quia gens Iudaeorum erat libera ab omni alienigena; immo erat prohibitum in lege, ut haberent dominum alienigenam (*Deut.*, 17³): "Non poteris alterius gentis hominem regem facere." Et quamvis S. Thomas (*De regimine principum*, lib. 3, capp. 4 et 5) videatur⁴ dicere quod imperium Romanorum fuit a Deo traditum propter iustitiam illorum et amorem patriae et propter optimas leges, quas habebant, hoc non est intellegendum quod ex traditione aut ex institutione divina haberent imperium, ut Augustinus etiam dicit (lib. 18, *De civitate Dei*), sed quod providentia divina factum est, ut consequerentur imperium orbis, sed alio iure, scilicet vel iusti belli vel alia ratione, non eo modo, quo habuit Saul et David regnum 344 a Deo.

Prob. 3.

Et hoc facile intellet quis, si⁵ consideret, qua ratione et successione imperia et dominia in orbe pervenerint usque ad nos. Vt enim omittamus omnia, quae praecesserunt diluvium, certe post Noë orbis fuit divisus in diversas provincias et regna, sive hoc fuerit ex ipsius Noë ordinatione, qui supervixit diluvio trecenti quinquaginta annos (*Gen.*, 9⁶), qui in diversas regiones misit colonias, ut patet apud Berosum Babylonicum, sive, quod verisimilius est, ex consensu mutuo gentium diversae familiae occupaverunt diversas provincias, ut (*Gen.*, 13⁷) "Abraham dixit ad Lot: 'Ecce universa terra coram te est; si ad sinistram ieris, ego dexteram tenebo; si tu dexteram elegeris, ego ad sinistram pergam.' " Vnde (*Gen.*, 10) traditur quod per pronepotes Noë divisae sunt nationes et regiones, sive in aliquibus regionibus primo inceperunt⁸ esse domini per tyrannidem, sicut videtur fuisse Nemrod, de quo *Gen.*, 10,⁹ quod primus incepit esse potens in terra, sive, convenientibus in unum aliquibus in unam Rempublicam, ex consensu communi sibi constituerunt principem. Certum est enim vel his vel aliis non dissimilibus modis dominia et imperia incepisse in mundo ac postea, vel iure haereditario vel iure belli vel aliquo alio tali¹⁰ titulo, derivata esse usque ad nostram aetatem, saltem usque ad 345 adventum Salvatoris. Ex quo patet nullum ante adventum Christi habuisse iure divino orbis imperium; neque illo titulo hodie posse Imperatorem sibi arrogare orbis dominium, et per consequens nec barbarorum.

Ratio ex qua
videtur Im-
perator post
adventum
Christi esse
orbis totius
dominus.

Sed post adventum Domini posset quis praetendere quod ex traditione Christi esset unus Imperatur in orbe, quia Christus etiam secundum

¹V. 15.

²S has subiecti ei.

³V. 15; VULGATE adds after *facere*: "qui non sit frater tuus."

⁴B has videtur.

⁵B has intelligit siquis.

⁶V. 28: "Vixit autem Noe post diluvium trecentis quinquaginta annis."

⁷Vv. 8-9: "Dixit ergo Abram ad Lot: 'Ne, quaeso, sit iurgium inter me et te et inter pastores meos et pastores tuos; fratres enim sumus. Ecce universa terra coram te est; recede a me, obsecro; si ad,' " etc., as above.

⁸M and S have *inceperint*, but cf. *constituerunt* near the end of the same sentence.

⁹Vv. 8-9: "Porro Chus genuit Nemrod; ipse coepit esse potens in terra; et erat robustus venator coram Domino." M inserts *habetur* before *quod*.

¹⁰M omits *tali*.

humanitatem fuit orbis Dominus, iuxta illud *Matth.*, 28¹: "Data est mihi omnis potestas," etc., quod secundum Augustinum et Hieronymum intellegitur secundum humanitatem. Et "Omnia subiecit sub pedibus eius," ut introducit Apostolus (*I ad Cor.*, in fin.²). Ergo, sicut reliquit in terra unum vicarium in spiritualibus, ita reliquit etiam in temporalibus, et hic est Imperator. Et S. Thomas (*De regimine principum*, lib. 3, cap. 13³) dicit quod Christus "a nativitate sua erat verus mundi Dominus et Monarcha, cuius vices gerebat Augustus, licet non intellegens." ⁴Clarum est quod non gerebat vices in spiritualibus, sed in temporalibus. Cum ergo Regnum Christi, si fuit temporale, fuit in toto orbe, ergo etiam Augustus erat dominus orbis, et eadem ratione successores eius.

346 Sed neque hoc dici ullo modo potest. Primum, quia hoc ipsum est⁵ dubium, an Christus secundum humanitatem fuerit Dominus temporalis orbis. Et probabilius est quod non, et ipse Dominus videtur adseruisse in illo loco, "Regnum meum non est de hoc mundo."⁶ Vnde et S. Thomas illic⁷ dicit quod "dominium Christi⁸ ordinatur ad salutem animae et ad spiritualia bona, licet a temporalibus non excludatur eo modo, quo ad spiritualia ordinatur."⁹ Vnde patet quod non est sententia S. Thomae quod Regnum Eius esset eiusdem rationis cum regno civili et temporali, sed ita est, quod ad finem redemptionis habebat omnimodam potestatem, etiam in temporalibus, sed, secluso illo fine, nullam habebat. Et praeterea,¹⁰ dato quod fuisset Dominus temporalis, hoc est divinare dicere quod reliquit illam potestatem Imperatori, cum de hoc nulla mentio facta sit in tota Scriptura. Et quod S. Thomas dicit, quod Augustus gerebat vices Christi, primum, hoc dixit ibi,¹¹ in *Tertia* autem *Parte*, ubi loquitur ex instituto¹² de potestate Christi, nullam mentionem facit¹³ de hac temporali potestate Christi.

Secundo, S. Thomas intellegit quod gerebat vices Christi quatenus¹⁴ temporalis potestas est subiecta et ministra spiritualis potestatis. Immo
347 hoc modo reges sunt ministri episcoporum, sicut et ars fabrilis est subiecta equestri et militari, sed tamen miles aut dux non est faber, sed habet imperare fabro in armis fabricandis. Et S. Thomas, in illo loco *Ioan.*, 18,¹⁵ expresse dicit Regnum Christi non esse temporale nec tale regnum,¹⁶ quale Pilatus intellegebat, sed regnum spirituale, quod ipse Dominus declarat eodem loco, "Tu dicis quia Rex sum ego: ego in hoc natus sum, et ad hoc veni in mundum, ut testimonium perhibeam veritati."¹⁷ Et sic patet quod

¹V. 18. ²Cap. 15, v. 26; cf. *ad Ephes.*, cap. 1, v. 22. S has 15 in place of *in fin.*

³"Ille natus erat qui verus erat mundi Dominus et Monarcha, cuius vices gerebat Augustus, licet non intelligens." ⁴M inserts *Et* here. ⁵B inserts *unum* here. ⁶*Ioan.*, cap. 18, v. 36.

⁷*De regimine principum*, lib. 3, cap. 13: "In quo verbo (i. e., a passage from *Malachias*) satis apparet quod dominium," etc., as above.

⁸M and S insert *directe* here, but this is probably an instance of M's attempting to secure greater fullness or to avoid an imagined ambiguity. See pp. 197-198.

⁹FRETTÉ has *ordinantur*, which is evidently a misprint. ¹⁰B has *primum* in place of *praeterea*.

¹¹B has *in illo c.*

¹²M has *ex professo*.

¹³M has *fecit*.

¹⁴B omits *Christi* and has *per hoc, quin* in place of *quatenus*.

¹⁵V. 36.

¹⁶M omits *regnum*.

¹⁷V. 37. The reference is found in *Commentaria super Ioannem*, cap. 18, lectio 6, § 8: "Sciendum est quod Dominus ad quaestionem respondens de regno ita responsionem suam temperavit ut nec manifeste confiteretur se esse regem, cum rex non esset eo modo, quo Pilatus intelligebat; nec negaret, cum spiritualiter esset Rex Regum. Dicit ergo: 'Tu dicis quia rex sum ego,' scilicet carnaliter, secundum quem modum rex non sum, sed alio modo rex sum ego."

Refellit auctor rationem adlatam.

est merum commentum dicere quod ex traditione Christi sit unus Imperator et dominus mundi.

Redit auctor ad confirmationem propositi.

Quod etiam aperte confirmatur, quia, si hoc esset ex iure divino, quomodo Imperium fuit divisum in Orientale et Occidentale, primo inter filios Magni Constantini, et postea ab Stephano Papa, qui Imperium Occidentale transtulit ad Germanos, ut habetur in dicto cap. *per venerabilem*.¹ Est enim ineptum et ineruditum, quod glossator illic dicit, quod Graeci postea non fuerunt Imperatores; nunquam enim Imperatores Germani hoc titulo praetenderunt se esse Graeciae dominos, et Ioannes Palaeologus, Imperator Constantinopolitanus, in Concilio Florentino habitus est pro legitimo Imperatore. Et praeterea patrimonium Ecclesiae (ut fatentur ipsi iuristae, etiam Bartolus) non est subiectum Imperatori, 348 quod, si omnia essent subiecta Imperatori iure divino, ex nulla donatione Imperatorum nec alio titulo potuissent eximi ab Imperatore, sicut nec Papa potest quemquam eximere a potestate Papae. Item nec Regnum Hispaniae est subiectum Imperatori, nec Francorum, ut etiam habetur in dicto cap. *per venerabilem*,² licet glossator ex capite suo addat quod hoc non est de iure, sed de facto. Item doctores concedunt quod civitates, quae aliquando fuerunt subiectae Imperio, potuerunt per consuetudinem eximi ab Imperio, quod non esset, si subiectio haec esset de iure divino.

Pontifex, qui imperium transtulit, traditur fuisse Leo, huius nominis tertius.

Probat auctor nec iure humano Imperatorem esse mundi dominum.

De iure autem humano constat quod Imperator non est dominus orbis, quia vel esset sola auctoritate legis, et nulla talis est; et, si esset, nihil operaretur, quia lex praesupponit iurisdictionem. Si ergo ante legem habebat Imperator iurisdictionem in orbe, lex non potuit obligare non subditos. Nec hoc habuit Imperator aut per legitimam successionem aut donationem aut permutationem aut emptionem³ aut iusto bello aut electione aut aliquo alio legali titulo, ut constat. Ergo nunquam Imperator fuit dominus totius mundi.

II Prop.

2. Secunda conclusio: Dato quod Imperator esset dominus mundi, 349 non ideo posset occupare provincias barbarorum et constituere novos dominos et veteres deponere vel vectigalia capere. Probatur, quia etiam qui Imperatori tribuunt dominium orbis, non dicunt eum esse dominum per proprietatem, sed solum per iurisdictionem, quod ius non se extendit ad hoc, ut convertat provincias in suos usus aut donet pro suo arbitrio oppida, aut etiam praedia. Ex dictis ergo patet quod hoc titulo non possunt Hispani occupare illas provincias.

Vt glossator in prooemia Digestorum.

Secundus titulus, quo Hispani potuerint venire in possessionem barbarorum, tractatur.

Secundus titulus, qui⁴ praetenditur, et quidem vehementer adseritur, ad iustam possessionem illarum provinciarum, est ex parte summi Pontificis. Dicunt enim quod summus Pontifex est monarcha temporalis in toto orbe⁵ et per consequens quod potuit constituere Hispaniarum Reges principes illorum barbarorum,⁶ et ita factum est.

¹Decrl., 4, 17, 13; S has in c. *venerabilem*, De electione, which is correct. The reference is to Decrl., 1, 6, 34.

²Decrl., 4, 17, 13.

³B has *permutatione aut emptione*.

⁴B has *quod*. See p. 231, n. 8 and p. 195.

⁵M has *summus Pontifex est totius orbis monarcha etiam temporalis*.

⁶M adds *illarumque regionum*.

Circa hoc opinio est quorundam iuriconsultorum quod Papa habet plenam iurisdictionem in temporalibus in toto orbe terrarum, adicientes etiam quod omnium principum saecularium potestas a Papa in eos derivata sit. Ita tenet Hostiensis (in cap. *quod super his*,¹ De voto²) et Archiepiscopus (3 parte, tit. 22, cap. 5, § 8) et Augustinus Anconitanus.³ Ita tenet Sylvester, qui⁴ multo etiam largius et benignius hanc potestatem tribuit⁵ Papae (in verbo *infidelitas*, § 7, et in verbo *Papa*, §§ 7,⁶ 10,⁷ 11⁸ et 14, et in verbo *legitimus*, § 4⁹). Mirabilia dicit in illis locis circa hoc, ut puta, quod "potestas Imperatoris et omnium aliorum principum est subdelegata respectu Papae" et quod est "derivata a Deo, mediante Papa," et quod "tota illorum potestas dependet a Papa"⁹ et quod "Constantinus donavit terras Papae in recognitionem¹⁰ domini temporalis," et e contrario "Papa donavit Constantino Imperium in usum et stipendium," immo quod "Constantinus nihil donavit, sed reddidit quod erat subtractum,"⁷ et quod, "si¹¹ Papa non exercet iurisdictionem in temporalibus extra patrimonium Ecclesiae, non est¹² propter defectum auctoritatis, sed ad vitandum scandalum Iudaeorum et ad nutriendam pacem,"¹³ et multa alia his vaniora et absurdiora.¹⁴ Tota probatio istorum est quia "Domini est terra, et plenitudo eius"¹⁵ et "Data est mihi omnis potestas in caelo et in terra"¹⁶ et Papa est vicarius Dei et Christi et (*ad Ephes.*, 2¹⁷) Christus "factus est pro nobis obediens usque ad mortem," etc. Et huius opinionis etiam videtur esse Bartolus in illa Extravaganti *Ad reprimendum*¹⁸ et videtur

¹*Decret.*, 3, 34, 8, which is an excerpt from POPE INNOCENT III, *Epist. ad Cantuariensem Archiepiscopum*.

²The full title is *De voto et voti redemptione*.

³*Summa de ecclesiastica potestate*, qu. 1, arg. 3, resp. 2: "Potestas Papae est maior omni alia maiori- tate causalitatis, quia eius potestas causat omnem aliam potestatem examinando, confirmando et iudicando. . . . Eius vero potestatem solus Christus fundavit et confirmavit. Nullius namque potestatis electio temporalis vel spiritualis est ipsa confirmatio nisi solum electio ipsius Papae vel de auctoritate eius." Resp. 3: "Potestas Papae est maior omni alia maiori- tate auctoritatis, quia nullius imperatoris, regis vel alterius leges seu statuta alicuius roboris vel firmitatis esse censentur nisi quatenus sunt per auctoritatem Papae confirmatae et approbatae, ut dicit Augustinus et ponitur Dist. 9, can. 1," etc.

⁴B has *quod*. See p. 231, n. 8, and p. 195.

⁵B and M have *tribuit* here, while S puts it before *hanc*.

⁶"In eos habet iurisdictionem, quia est vicarius Christi habentis iurisdictionis in omnes."

⁷¶4: "Unde donavit Constantinus Papae in venerationem et recognitionem domini administrationem temporalem Imperii, et eandem immediate Papa concedit Imperatori in usum et stipendium officii pro defensione et gubernatione pacifica Ecclesiae." ¶5: "Quia potius reddidit quod erat subtractum."

⁸"Nec utitur hac administratione . . . non propter carentiam auctoritatis, sed propter nutriendum in filiis vinculum unitatis et pacis . . . ad vitandum scandalum Iudaeorum."

⁹"Concludo igitur et dico quod cum potestas Imperatoris et a fortiori aliorum principum, ut probant Verue, et Augustinus de Ancona et recitat Archidiaconus (tertia parte, tit. 23), sit subdelegata respectu Papae (2, qu. 1, cap. *quicumque litem*) et sic derivata a Deo mediante Papa, qui secundum S. Thomam (in *Secunda*, dist. 44) in lege tenet apicem in potestate spirituali et temporali, et tota iurisdictione Imperatoris a Papa dependeat, quia illum instituit et destituit," etc.

¹⁰B has *in recognitione*.

¹¹B omits *si*.

¹²S has *exerceat* . . . *sit*.

¹³See n. 8 above. Cf. Augustinus Anconitanus, *Summa de ecclesiastica potestate*, qu. 45, arg. 2, resp., quoted on page 230, footnote 2, to which add: "Quare autem non utitur temporalium administratione. . . . Hoc non est propter carentiam auctoritatis, sed propter nutriendum in suis filiis vinculum pacis et unitatis," etc.

¹⁴M adds *ibi dicit*.

¹⁵*Psalm.* 23, v. 1.

¹⁶*Math.*, cap. 28, v. 18.

¹⁷B, M, and S have *ad Ephes. 2*, but the passage quoted is to be found in *ad Philipp.*, cap. 2, v. 8. Evidently the mistake was VICTORIA's.

¹⁸§ 9: "Imperium Romanum adveniente Christo incepit esse Christi et apud Christum et Eius vicarium est."

favere S. Thomas in fine *Secundi Sententiarum*, cuius ultima verba sunt in 351
solutione ad quartum argumentum, quod est ultimum totius libri, quod
Papa tenet¹ utriusque potestatis apicem, scilicet saecularis et spiritualis; et
eiusdem opinionis est Hervaeus² *De potestate Ecclesiae*.

Summa
opinionis
praedictorum.

Hoc ergo fundamento iacto, dicunt auctores huius sententiae, primo,
quod Papa libere potuit constituere principes barbarorum Reges Hispaniae,
tanquam supremus dominus temporalis. Secundo, dicunt quod, dato quod³
hoc non posset, saltem si barbari nolunt recognoscere dominium temporale
Papae in eos, quod⁴ hac ratione potest eis inferre bellum et imponere prin-
cipes. Vtrumque autem factum est. Nam primo summus Pontifex concessit
illas provincias Regibus Hispaniae. Secundo, etiam barbaris proposi-
tum fuit et significatum quod Papa est vicarius Dei et habet vices Eius in
terris et ideo quod⁵ recognoscant eum superiorem, quod si illi recusaverint,
iusto titulo est⁶ eis bellum illatum⁷ et occupatae provinciae illorum, etc. Et
hoc secundum nominatim dicit Hostiensis, ubi supra, et *Summa Angelica*.⁸

Respondet
auctor aliquot
propositioni-
bus.
I Prop.

Sed, quia de dominio temporali Papae prolixè disputavi in *Relectione*
De Potestate Ecclesiastica,⁹ ideo hic breviter per propositiones respondebo. 352

3. Prima: Papa non est dominus civilis aut temporalis totius orbis,
loquendo proprie de dominio et potestate civili. Haec conclusio est Tur-
recrematae (lib. 2, cap. 113), et Ioannis Andreae et Hugonis (Dist. 69, can.
*cum ad verum*¹⁰). Et fatetur doctissimus Innocentius in dicto cap. *per*
venerabilem,¹¹ se non habere potestatem temporalem in Regno Franciae. Et
videtur expressa sententia Bernardi in secundo libro *De consideratione ad*
Eugenium.¹² Et opposita sententia videtur esse contra praeceptum Domini,
qui (*Matth.*, 20,¹³ et *Luc.*, 22¹⁴) ait, "Scitis quia principes gentium dominantur
eorum," etc., "non ita erit inter vos."¹⁵ Item contra praeceptum Apostoli,¹⁶
"Non dominantes in clerum, sed forma facti gregis." Et si Christus Domi-
nus non habuit dominium temporale, ut supra tanquam probabilius di-
sputat est, etiam ex sententia S. Thomae,¹⁶ multo minus Papa habet, qui
est vicarius. Et isti tribuunt summo Pontifici, quod ipse nunquam agnovit,
immo contrarium fatetur in multis locis, ut in relectione illa dictum¹⁷ est.

¹M has *tenet*.

²B has *Herbeus*.

³M omits *quod*.

⁴M omits *quod*, but see p. 204.

⁵S has *ut*.

⁶M has *iam iusto titulo dicitur*; S has *isto titulo est*.

⁷M has *inferendum*.

⁸ANGELUS DE CLAVASIO, *Summa Angelica de casibus conscientiae*, s. v. *infidelis*, § 7: "Vtrum infideles qui non recognoscunt dominium Ecclesiae licite possint rebus suis spoliari? Hostiensis (in cap. *quod super his*, De voto) quod sic, per illud *Matth.* ult. 'Data est mihi omnis potestas in caelo et in terra,' quam quidem transtulit in vicarium suum; secus si recognoscunt dominium Ecclesiae nec sunt infesti Christianis. Pro hoc habes textum cum glossis 23, qu. 7, can. *si de rebus*. In notis in dicto cap. *quod super his* tenet quod non possunt, nisi sint infesti Christianis vel aliter delinquant in lege naturae."

⁹Under the question: "Vtrum potestas spiritualis sit supra potestatem civilem," pp. 28-43 of the edition used.

¹⁰*Decr.*, 1, 96, 6, which is an excerpt from POPE NICHOLAS I, *Epist. ad Michaelē Imperatorem* (Proposueramus). B, M and S have 69, which is incorrect.

¹¹*Decret.*, 4, 17, 13.

¹²Cap. 6, § 9-11: "Non enim ad dominandum opinor" (§ 9); "Planum est: Apostolis interdicitur dominatus" (§ 10); and elsewhere.

¹³*Matth.*, cap. 20, vv. 25-26.

¹⁴Vv. 25-26: "Dixit autem eis: Reges gentium dominantur eorum; et qui potestatem habent super eos, benefici vocantur. Vos autem non sic."

¹⁵*I Pet.*, cap. 5, v. 3: "Neque ut dominantes in cleris, sed forma facti gregis ex animo." The editor of the third or subsequent edition has incorporated the words *Petri I, c. ult.* into the text.

¹⁶*De regimine principum*, lib. 3, cap. 13.

¹⁷B has *additum* in place of *illa dictum*.

Et satis est¹ probatum, sicut supra de Imperatore,² quia non potest ei convenire dominium, nisi iure naturali aut divino aut humano. Naturali aut humano, certum est quod non; de divino, nullum profertur. Ergo frustra adseritur et voluntarie.

353 Et, quod Dominus dixit Petro,³ "Pasce oves meas," satis ostendit esse potestatem in spiritualibus et non⁴ temporalibus. Et praeterea⁵ ostendit⁶ non esse in toto orbe. Nam ipse Dominus⁷ dixit (*Ioan.*, 10⁸) quod in fine saeculi "fiet unum ovile, et unus pastor." Vnde satis constat in praesentia non omnes esse oves huius⁹ ovilis.¹⁰ Item, dato quod Christus haberet hanc potestatem, constat non esse commissam Papae. Patet, quia non minus Papa est vicarius Christi in spiritualibus quam in temporalibus. Sed Papa non habet iurisdictionem spiritualem super infideles, ut etiam faterentur adversarii et videtur expressa sententia Apostoli¹¹ (*I ad Cor.*, 5¹²): "Quid ad me de his, qui foris sunt, iudicare?" Ergo nec etiam in temporalibus. Et certe argumentum nullum est: Christus habuit potestatem temporalem in toto orbe; ergo et Papa habet. Nam Christus sine dubio habuit potestatem spiritualem in toto orbe, non minus supra fideles quam supra infideles, et potuit ferre leges obligantes totum orbem, sicut fecit de baptismo et articulis fidei. Et tamen Papa non habet illam potestatem supra infideles, nec posset eos excommunicare nec prohibere connubia in gradibus iure divino permissis. Ergo. Item, quia etiam secundum doctores Christus
354 potestatem excellentiae non commisit etiam Apostolis, ergo etiam nihil valet consequentia: Christus habuit potestatem temporalem in orbe; ergo et Papa.

Refutat auctor rationes contrariae opinionis.

4. Secundo propositio: Dato quod summus Pontifex haberet talem^{II Prop.} potestatem saecularem in toto orbe,¹³ non posset eam dare principibus saecularibus. Hoc patet, quia esset¹⁴ annexa Papatui. Nec potest eam Papa separare ab officio summi Pontificis nec potest privare successorem illa potestate, quia non potest esse sequens summus Pontifex minor praecessore suo; et, si unus Pontifex dedisset hanc potestatem, vel nulla esset talis collatio vel sequens Pontifex posset auferre.

¹M omits *est*.

²Here S follows B, which has *de Imperatore sicut supra*. I have adopted the obvious correction made by M.

³*Ioan.*, cap. 21, v. 17.

⁴S has repeated the *in* here unnecessarily.

⁵B has *primum*, which is not indefensible; but see page 195.

⁶M and S have *ostenditur Papam*. M also adds *dominum* after *esse*. This seems to be a clear case of amplification by M to avoid a fancied ambiguity. The question arises from the interpretation of a passage in *St. John* which has been alleged in support of world-wide temporal power of the Pope. By these words, VICTORIA claims, Christ showed that it was power in spiritual, and not in temporal affairs that he intended to convey. Besides, He showed that this power (*i. e.*, in spiritual affairs) was not over the entire world, because He Himself says that some day it would be, thereby implying that it was not at that time. Up to this point there is no reason for mentioning the Pope, the argument being simply that from the passage in question it can not be shown that Christ gave (1) world-wide temporal power to St. Peter, or (2) even world-wide spiritual power with regard to every individual, because in that sense He never actually had it Himself. It is only after this point in the argument that VICTORIA proves that, granting that Christ had world-wide temporal power, He never gave it to the Pope.

⁷B omits *Dominus*.

⁸V. 16.

⁹M has *unius*.

¹⁰B adds *saltem infideles*.

¹¹B has *expresse* simply and S has *expresse sententia Apostoli*.

¹²V. 12, which has *is* instead of *his*.

¹³B has *in mundo*.

¹⁴B has *est*.

III Prop.

5. Tertia propositio: Papa habet potestatem temporalem in ordine ad spiritualia, i. e., quantum necesse est ad administrationem rerum spiritualium. Haec etiam est Turrecrematae (ubi supra, cap. 114) et est omnium doctorum. Et probatur, quia ars, ad quam pertinet finis superior, est imperativa et praeceptiva artium, ad quas spectant fines inferiores¹ (primo *Ethicorum*²). Sed finis potestatis spiritualis est ultima felicitas, finis autem potestatis civilis est felicitas politica. Ergo potestas temporalis est subiecta spirituali. Et hac ratione utitur Innocentius in cap. *solitae*, De maiori-³⁵⁵ et obedientia,³ et confirmatur,⁴ quia, cui commissa est cura alicuius officii, intelleguntur concessa omnia, sine quibus officium recte expediri non potest (De officio delegati,⁵ cap. 1⁶). Cum ergo ex commissione Christi Papa sit pastor spiritualis et hoc officium impediri possit per potestatem civilem, cum Deus et natura non deficient in necessariis, non est dubitandum quin fuerit ei relicta potestas in temporalibus, quantum necesse est ad gubernationem spiritualium. Et hac ratione potest Papa infringere leges civiles, quae sunt nutritivae peccatorum, sicut infregit leges de praescriptione malae fidei, ut patet De praescriptionibus, cap. fin.⁷ Et hac etiam ratione, discordantibus principibus de iure alicuius principatus et in bella ruentibus, potest esse iudex et cognoscere de iure partium et sententiam ferre, quam tenentur recipere principes, ne scilicet eveniant tot mala spiritualia, quot ex bello inter principes Christianorum necesse est oriri. Et licet hoc vel non faciat Papa vel non saepe faciat, hoc non est quia non potest, ut dicit Dominus Durandus, sed quia timet scandalum, ne principes putent hoc facere per ambitionem, vel veritus rebellionem principum a Sede Apostolica. Et hac⁸ ratione potest aliquando reges deponere et etiam novos constituere,³⁵⁶ sicut aliquando factum est. Et certe nullus legitime Christianus deberet negare hanc potestatem Papae. Et ita tenent Paludanus et Durandus (*De potestate Ecclesiae*) et Henricus Gandavensis (*Quotlibetorum* 6, art. 23). Et ad hunc sensum intellegenda sunt iura, quae dicunt Papam habere utrumque gladium, quae multa sunt. Et doctores antiquiores⁹ hoc dicunt, sicut etiam S. Thomas in *Primo*¹⁰ *Sententiarum*, ut citatum est.

Notent hoc
magistratus et
principes
saeculares.

Immo non dubito quin episcopi habeant hoc modo auctoritatem temporalem in suo episcopatu eadem ratione qua Papa in orbe. Vnde male dicunt et male faciunt, vel principes vel magistratus, qui contendunt impedire episcopos ne coërceant saeculares a peccatis per poenas pecuniarias aut exilium aut alias poenas temporales. Hoc enim non est supra potestatem eorum, modo non faciant ex avaritia et ad quaestum, sed ad necessitatem et commodum rerum spiritualium. Et ex hoc loco iterum sumitur argumentum pro prima conclusione; si enim Papa esset dominus orbis, etiam episcopus esset dominus temporalis in suo episcopatu, quia etiam in suo episcopatu est vicarius Christi, quod tamen adversarii negant.

¹M adds *ut habetur*.

²Cap. 1.

³Decret., 1, 33, 6, which is an excerpt from POPE INNOCENT III, *Epist. ad ill. Constantinopolitanum Imperatorem*.

⁴B has *confirmat*.

⁵The full title is *De officio et potestate iudicis delegati*.

⁶Decret., 1, 29, 1, which is an excerpt from POPE ALEXANDER III, *Epist. ad Londonensem Episcopum*.

⁷Decret., 2, 26, 20, which is an excerpt from POPE INNOCENT III, *In concilio generali*.

⁸M inserts *ipsa* here.

⁹B has *Et quicumque doctores antiquiores qui*.

¹⁰S has *Secundo*.

- 357 6. Quarta conclusio: Papa nullam potestatem temporalem habet in barbaros istos, neque in alios infideles. Haec patet ex prima et tertia. Nam¹ non habet potestatem temporalem nisi in ordine ad spiritualia. Sed non habet potestatem spirituales in illos² (I ad Cor., 5³). Ergo nec temporalem.
7. Sequitur corollarium quod, etiamsi barbari nolint recognoscere dominium aliquod Papae, non ideo potest eis bellum inferri et bona illorum occupari. Patet, quia nullum tale dominium habet. Et confirmatur hoc manifeste. Nam (ut infra dicetur et adversarii fatentur), dato quod barbari nolint recipere Christum pro domino, non tamen possunt bello peti aut aliquo malo affici. Absurdissimum est autem, quod ipsi dicunt,⁴ quod, cum possint impune non recipere Christum, teneantur recipere vicarium Eius, alias possint bello cogi et spoliari omnibus bonis, immo et supplicio affici. Et confirmatur iterum, quia causa secundum istos, quare, etiamsi nolint recipere Christum aut fidem Eius, non possunt cogi, est, quia non potest eis evidenter probari per rationes naturales. Sed multo minus potest probari dominium Papae. Ergo etiam non possunt cogi ad recognoscendum hoc dominium.
- 358 Et Sylvester, quamvis latissime loquatur *de potestate Papae*,⁵ tamen in verbo *infideles*⁶ (§ 7) expresse tenet contra Hostiensem quod infideles non possunt bello cogi ad recognoscendum hoc dominium, nec hoc titulo possunt spoliari bonis suis. Et ita tenet Innocentius in dicto cap. *quod super his*,⁷ De voto.⁸ Et non est dubium quin S. Thomas sit huius sententiae (*Secunda Secundae*, qu. 66, art. 8, ad secundum⁹) et Caietanus illic¹⁰ expresse, ubi dicit S. Thomas quod infideles non possunt spoliari suis bonis, nisi qui sunt subditi principibus temporalibus, propter causas legum legitimas, propter quas etiam alii subditi possunt privari. Immo nec Saraceni inter Christianos unquam isto titulo fuerunt spoliati suis bonis aut aliquo incommodo affecti. Nam si iste titulus est sufficiens ad inferendum eis bellum, hoc tantundem est ac si quis dicat quod ratione infidelitatis possunt spoliari. Certum est enim quod nullus infidelium recognoscit hoc dominium. Nullus autem doctor nec etiam inter adversarios est, qui hoc concedat, scilicet quod solo titulo infidelitatis possunt spoliari. Ergo omnino est sophisticum, quod isti doctores dicunt, quod, si infideles recognoscunt dominium Romani Pontificis, non possunt bello infestari, bene autem si non recognoscunt; nullus enim recognoscit.
- 359 Ex quo patet quod nec iste titulus est idoneus contra barbaros, vel quia Papa dederit provincias illas tanquam dominus absolute vel quia non

IV Prop.

Prob. 1.

Coroll.

Confirm. 1.

Absurditas
sententiae
contrariae.

Confirm. 2.

Prob. 2, et
auctoritate.

Prob. 3.

Prob. 4.

¹B inserts *si* here.²M inserts *ut patet* here.³Vv. 12-13.⁴B adds *et faciunt*.⁵I. e., in verbo *Papa* or *De Papa et eius potestate*.⁶I. e., *infidelitas* or *De infidelitate et infidelibus*.⁷*Decri.*, 3, 34, 8, which is an excerpt from POPE INNOCENT III, *Epist. ad Cantuariensem Archiepiscopum*.⁸The full title is *De voto et voti redemptione*.⁹"Ad secundum dicendum quod in tantum aliqui infideles iniuste res suas possident, in quantum eas secundum leges terrenorum principum amittere iussi sunt; et ideo ab eis possunt per violentiam subtrahi, non privata auctoritate, sed publica."¹⁰See quotation on page 229, note 5, and add: "Contra hos nullus rex, nullus imperator, nec Ecclesia Romana potest movere bellum ad occupandas terras eorum aut subiciendum eos temporaliter, quia nulla subest causa iusti belli."

recognoscunt dominium Papae, habent Christiani¹ causam iusti belli contra illos. Et hanc sententiam tenet Caietanus late (*Secunda Secundae*, qu. 66, art. 8, ad secundum). Nec auctoritas canonistarum in contrarium multum debet movere, quia, ut supra dictum est, haec tractanda sunt ex iure divino, et plures et maiores contrarium tenent, inter quos etiam est Ioannes Andreae. Nec habent pro se aliquem textum. Nec etiam gravis auctoritas Archiepiscopi Florentini hoc loco recipienda est, secutus est enim Augustinum Anconitanum,² sicut alias solet sequi canonistas. Et dictis patet quod Hispani, cum primum navigaverunt ad terras barbarorum, nullum ius secum adferebant occupandi provincias illorum.

Tertius
titulus.

Et ideo alius titulus est, qui potest praetendi, iure inventionis, nec alius titulus a principio praetendebatur, et hoc solo titulo primo navigavit Columbus Genuensis. Et videtur quod hic titulus sit idoneus, quia illa, quae sunt deserta, fiunt iure gentium et naturali occupantis (*Inst.*, De rerum divisione, § *ferae bestiae*³). Ergo, cum Hispani fuerint primi, qui 360 invenerint et occupaverint illas provincias, sequitur quod iure possident, sicut si solitudinem inhabitatam hactenus invenissent.

Sed de isto titulo, qui tertius est, non oportet multa verba facere, quia, ut supra probatum est, barbari erant veri domini, et publice et privatim. Ius autem gentium est,⁴ ut, quod in nullius bonis est, occupanti conceditur,⁵ ut habetur expresse in dicta § *ferae bestiae*.³ Vnde, cum illa bona⁶ non carerent domino, non cadunt sub illo titulo. Et sic, licet iste titulus cum alio aliquid facere possit (ut infra dicetur), tamen per se nihil iuvat ad possessionem illorum, non plus quam si illi invenissent nos.

Quartus ti-
tulus trac-
tatus.

Et quod sit
legitimus,
Arg. I.

Et ideo quartus titulus praetenditur, quia scilicet nolunt recipere fidem Christi, cum tamen proponatur eis et sub obtestationibus⁷ admo-
neantur, ut recipiant. Et videtur quod iste titulus sit legitimus ad occu-
pandas terras barbarorum, primo, quia barbari tenentur recipere fidem
Christi, quia "Qui crediderit, et baptizatus fuerit, salvus erit, qui vero non
crediderit, condemnabitur."⁸ Nullus autem condemnatur, nisi pro mortali,
et (*Act.*, 4⁹) "Non est aliud nomen datum hominibus in quo oporteat nos
salvos fieri." Ergo, cum¹⁰ Papa sit minister Christi, saltem in spiritualibus, 361

¹B omits *Christiani*.

²*Summa de ecclesiastica potestate*, qu. 45, arg. 2, resp.: "Ad quaestionem ergo puto pro veritate esse dicendum quod Papa vicarius Iesu Christi vice Dei viventis in toto orbe terrarum; spiritualium et temporalium habet universalem iurisdictionem."

³*Inst.*, 2, 1, 12; KRUEGER's text of the *Institutes* has *ferae igitur bestiae* as the opening words of this section. For wording of passage referred to, see n. 5 below.

⁴B omits *est*.

⁵S has the obvious correction here, where B has *concedit* and M *concedatur*. The editor of B or his printer probably omitted a tilde over the final *i*, the usual abbreviation of the passive ending *-ur*. The editor of M in correcting one error simply fell into another. The text of the *Institutes* runs as follows: ". . . Iure gentium statim illius esse incipiunt: quod enim ante nullius est, id naturali ratione occupanti conceditur." However, it is quite possible that M adopted the subjunctive, thinking it required by the *ut* which precedes.

⁶B omits *illa bona*.

⁷S has *ostentationibus*. The idea involved, however, is not ostentation, but earnest entreaty.

⁸*Marc.*, cap. 16, v. 16.

⁹V. 12: "Nec enim aliud nomen est sub caelo datum hominibus," etc.

¹⁰M has *Cum ergo*.

videtur quod saltem auctoritate Papae possent cogi ad recipiendam fidem Christi et, si requisiti nolint recipere, iure belli possit agi contra eos. Immo videtur quod etiam principes sua auctoritate hoc possint, quia sunt ministri Dei (*ad Rom.*, 13¹) et “vindices in iram eis qui male agunt.” Isti autem pessime agunt, non recipientes fidem Christi. Ergo possunt cogi a principibus.

Secundo, quia, si Galli nollent oboedire Regi suo, posset Rex Hispaniae cogere illos, ut oboedirent.² Ergo, si nolunt oboedire Deo, qui est verus et supremus Dominus, possunt principes Christiani cogere illos barbaros, ut oboediant; non enim videtur quod debeat esse peioris conditionis causa Dei quam hominum. Et confirmatur, quia, sicut arguit Scotus (*Quarto*, dist. 4, qu. 9³) de pueris infidelium baptizandis, potius debet aliquis cogi ad oboediendum domino superiori quam inferiori. Si ergo cogi possent barbari ut oboedirent principibus suis, ergo multo magis ut oboediant Christo et Deo.

Tertio, quia, si blasphemarent publice Christum, possent bello cogi ut desisterent ab huiusmodi blasphemis, ut doctores concedunt et verum 362 est. Possemus enim bello persequi, si uterentur crucifixo ad irrisionem vel quocumque modo abuterentur ad ignominiam rebus Christianis, ut fingentes ad illusionem Sacramenta Ecclesiae vel aliquod⁴ simile. Quod etiam patet; nam si facerent iniuriam regi Christiano, etiam defuncto, possemus vindicare iniuriam, multo ergo magis si faciant iniuriam Christo, qui est Rex vivus Christianorum.⁵ Nec de hoc est dubitandum, quia, si Christus viveret inter mortales et pagani facerent Ei iniuriam, non est dubium quin possemus bello persequi iniuriam. Ergo etiam nunc. Sed maius peccatum est infidelitas quam blasphemia, quia, ut S. Thomas dicit et probat (*Secunda Secundae*, qu. 10, art. 3⁶), “infidelitas est gravissimum inter peccata, quae contingunt in perversitate morum,” quia opponitur directe fidei,⁷ et blasphemia non opponitur directe fidei, sed confessioni fidei. Infidelitas etiam tollit principium conversionis in Deum, scilicet fidem, non autem blasphemia. Si ergo pro blasphemia in Christum possunt Christiani bello persequi infideles, ergo pro ipsa infidelitate. Et confirmatur, quod blasphemia non sit ita magnum peccatum, sicut infidelitas, quia pro infidelitate est poena capitalis Christiano per leges civiles, non autem pro blasphemia.

Arg. II.

Arg. III.

Et S. Thomas,
Secunda Se-
cundae, qu.
10, art. 3.

Confirm.

¹V. 4: “Non enim sine causa gladium portat, minister enim Dei est, vindex in iram ei, qui male agit.”

²B adds *ut certum est*.

³In *Libros IV Sententiarum*, lib. 4, dist. 4, part. 3, sect. ult. (De parvulis Iudaeorum et infidelium: an sint invitati parentibus baptizandi): “Universaliter enim in potestatibus ordinatis potestas inferior non obligat in his quae sunt contra superiorem. . . . Et si quis habet regere rempublicam magis debet quantum in se est cogere unumquemque subdi domino superiori quam inferiori.” ⁴S has *aliquid*.

⁵So B; M has *rex et dominus Christianorum* and S has *rex unus Christianorum*. The difference probably arose out of the fact that *vivus* appears as *uius* in B. The editor of M, with a hand ever ready to correct and sometimes even to make fancied improvements, puts *et dominus* for the word that is difficult to read. The contrast is between *rex Christiano* and *Rex Christianorum*, between *rex defunctus* and *Rex vivus*. We would expect *vivus*, even if we did not find it, as we actually do.

⁶“Unde manifestum est quod peccatum infidelitatis est maius omnibus peccatis, quae contingunt in perversitate morum.”

⁷S has *fidei directe*, while B omits *quia . . . fidei* and inserts *et* after *blasphemia*.

Respondetur
aliquot pro-
positionibus.
I Prop.

Altissiodo-
rensis, Gui-
lelmi Pa-
risiensis,
Gersonii
contraria
sententia,
scilicet in-
fidelitatem
semper esse
peccatum,
recitatur.

In eadem sen-
tentia videtur
esse Hugo de
S. Victore.

8. Pro responsione sit prima propositio: Barbari, priusquam aliquid audissent de fide Christi, non peccabant peccato infidelitatis eo, quod non 363 crederent in Christum.¹ Haec propositio est ad litteram S. Thomae (*Secunda Secundae*, qu. 10, art. 1²), ubi dicit quod "apud eos, qui nihil audierunt de Christo, infidelitas non habet rationem peccati, sed magis poenae, quia talis ignorantia divinorum ex peccato primi parentis secuta est." "Qui autem," inquit, "sic sunt infideles, damnantur quidem propter alia peccata, sed non propter peccatum infidelitatis. Vnde Dominus dicit (*Ioan.*, 15³), 'Si non venissem, et locutus eis non fuisset, peccatum non haberent.' Quod exponens Augustinus dicit quod loquitur de illo peccato, quo non crediderunt in Christum." Idem videtur dicere S. Thomas (*Secunda Secundae*, qu. 10, art. 6,⁴ et qu. 34, art. 2, ad secundum⁵).

Haec propositio est contra multos doctores et primo contra Altissiodorensem (part. 3, in qu. *Utrum fidei possit subesse falsum*) ubi dicit quod non potest aliquis habere ignorantiam invincibilem, non solum Christi, sed cuiuscumque articuli fidei, quia, si faciat quod in se est, Dominus illuminabit sive per doctorem intrinsecum sive extrinsecum, et sic semper est peccatum mortale credere aliquid contrarium articulis fidei. Ponit exemplum de vetula, cui episcopus praedicaret aliquid contra fidei articulum. Et generaliter dicit quod ignorantia iuris divini neminem excusat. 364 Eadem fuit opinio Guilelmi Parisiensis, qui eodem modo argumentatur. Vel enim talis facit quod in se est, et illuminabitur; si non facit, non excusatur. Et in eadem sententia videtur fuisse Gersonius (*De spirituali vita animae*, lect. 4⁷). "Concors," inquit, "est sententia doctorum quod in his, quae sunt iuris divini, non cadit ignorantia invincibilis, quoniam⁸ facienti quod in se est, Deus semper assistat paratus illustrare mentem, quantum oportebit ad salutem et erroris evitationem." Et Hugo de S. Victore (lib. 2, part. 9, cap. 5⁹) dicit neminem excusari per ignorantiam

¹B has *Christo* in place of *in Christum*.

²"Si autem accipiatur infidelitas secundum negationem puram, sicut in illis, qui nihil audierunt de fide, non habet rationem peccati, sed magis poenae, quia talis ignorantia divinorum ex peccato primi parentis est consecuta. Qui autem sic sunt infideles, damnantur quidem propter alia peccata, quae sine fide remitti non possunt, non autem damnantur propter infidelitatis peccatum," etc., as above.

³V. 22; VULGATE has *et locutus fuisset eis*.

⁴"Quia infidelitas habet rationem culpae, ut supra (art. 1) dictum est, sed magis ex hoc, quod remittitur fidei, quam ex hoc, quod non habet ea, quae fidei sunt. Hoc enim videtur, ut dictum est, magis ad rationem poenae pertinere."

⁵"Ad secundum dicendum quod ipsa infidelitas non habet rationem culpae, nisi in quantum est voluntaria."

⁶B has *potest*.

⁷Coroll. 3: "Et quicquid sit de ignorantia facti aut iuris humani et naturalis positivi, concors est sententia. Nullam in his quae legis divinae sunt cadere ignorantiam invincibilem, quoniam facienti quod in se est, Deus semper assistit paratus illustrare mentem quantum oportebit ad salutem et erroris evitationem."

⁸B has *quin*, M has *quum*, and S has *cum*, where the text of GERSON has *quoniam*. The editor of B started the mistake by misreading an abbreviation of *quoniam*. The editor of M, feeling the need of a causal particle, changed the *quin* to *quum*, which in turn becomes *cum* in S.

⁹"Ego vel neminem talem esse vel, si forte aliquis est, si eius culpa non obstitisset, audire et scire potuisse ac debuisse sine cunctatione affirmo." This passage is in the *De Sacramentis Christianae fidei* (tome 3, p. 456, of the edition of HUGO's works which was used). Part. 9 should be part. 6.

a praecepto baptismi suscipiendi, quia, nisi sua culpa obstiterit,¹ audire et scire poterit, ut exemplum est de Cornelio (*Act.*, 10).

Hanc sententiam et opinionem limitat Adrianus in *Quotlibetis*, qu. 4. In eadem ex parte Adrianus.
 “Ea,” inquit, “quae sunt² iuris divini, sunt in duplici differentia. Quaedam sunt, ad quorum scientiam Deus non obligat omnes universaliter, ut sunt apices iuris divini, et difficultates circa illud et circa Scripturam sacram et praecepta; et circa haec bene potest cadere ignorantia invincibilis, etiamsi quis faciat totum quod in se est. Alia sunt, ad quorum scientiam Deus generaliter obligat omnes, ut articuli fidei, praecepta universalis legis; et
 365 de his est verum, quod doctores dicunt, quod non potest quis excusari per ignorantiam. Si enim quis facit quod in se est, illuminabitur a Deo per doctorem interiorem vel exteriorem.”

Sed nihilominus conclusio posita videtur expresse de intentione S. Thomae. Et probatur: Tales, qui nunquam audierunt quicquam,³ quantumcumque sint alias peccatores, ignorant invincibiliter; ergo talis ignorantia non est peccatum. Antecedens patet ex illo *ad Rom.*, 10⁴: “Quomodo credent, nisi audiant; quomodo autem audient sine praedicante?” Ergo, si non est eis praedicata fides,⁵ ignorant invincibiliter, quia non possunt scire. Neque Paulus condemnat infideles, quia non faciunt quod in se est, ut illuminentur a Deo, sed quia, cum audissent, non crediderunt. “Numquid,” inquit, “non audierunt? Et quidem in omnem terram exivit sonus eorum.”⁶ Ex hoc condemnat illos, quia in omnem terram fuit praedicatum Evangelium, alias non condemnaturus, quantumcumque haberent alia peccata.

Vnde etiam decipitur Adrianus in alio puncto circa materiam de ignorantia. Dicit enim, in eodem quotlibeto, quod etiam in materia morum, si quis adhibet omnem industriam et diligentiam ad sciendum ea, quae oportet, non satis est ad excusationem ignorantiae, nisi per contritionem
 366 peccatorum disponat se ad hoc, ut illuminetur a Deo; ut si quis dubitat de aliquo contractu et quaerit a viris doctis et alias laborat ad sciendum veritatem et putat esse licitum, si forte non est licitus et exercet, non excusatur, si forte alias est in peccato, quia non facit totum quod in se est ad vincendum ignorantiam, et licet stet quod, etiamsi disponat se ad gratiam, non illuminetur, tamen non excusatur, nisi tollat hoc impedimentum, scilicet peccatum. Vnde, si de eodem casu et contractu⁷ Petrus et Ioannes dubitant et faciunt aequalem diligentiam humanam et uterque putat esse licitum—Petrus autem est in gratia, Ioannes in peccato—Petrus habet ignorantiam invincibilem, Ioannes vincibilem; et si uterque exerceat contractum, Petrus excusatur, Ioannes non excusatur. Fallitur, inquam, in hoc, sicut a me disputatum est late *Prima Secundae*, in materia de ignorantia.⁸ Mirabile enim esset dicere quod in nulla materia iuris divini posset habere ignorantiam invincibilem infidelis, immo quicumque est in peccato mortali. Immo sequitur quod ille Petrus, qui erat in gratia

Reiecta horum sententia, propositionem suam ponit.

Adriani in materia de ignorantia deceptio.

Ratio auctoris contra Adrianum.

¹B has destiterit.

²S omits sunt.

³B omits quicquam.

⁴V. 14: “Quomodo credent ei quem non audierunt? Quomodo,” etc., as above.

⁵B omits fides.

⁶Ad Rom., cap. 10, v. 18.

⁷B has tractatu and M has contractatu.

⁸I. e., qu. 76.

et ignorabat invincibiliter aliquid circa usuram aut simoniam, solum per hoc, quod caderet in mortale, illa ignorantia fieret vincibilis, quod absurdum est.

Sententia auctoris de ignorantia, quae est peccatum et quae non est peccatum.

Rursum propositionem suam auctor confirm.

Ratio deceptionis praedictorum auctorum.

II Prop.

Prob.

9. Vnde dico quod ad hoc, quod ignorantia imputetur et sit peccatum vel vincibilis, requiritur negligentia circa illam materiam, puta, quia noluit audire vel auditum non credidit; et e contrario¹ ad ignorantiam invincibilem satis est quod fecerit humanam diligentiam ad sciendum, etiamsi alias sit in mortali. Vnde, quantum ad hoc, idem est iudicium de exsistenti in peccato et de exsistenti in gratia² nunc et statim post adventum Christi vel post passionem Eius. Nec posset Adrianus negare quin paulo post passionem Domini Iudaei, qui erant in India vel Hispania, ignorarent³ invincibiliter passionem Domini, quantumcumque essent in mortali, immo expresse hoc ipse concedit in qu. 1, ad quartum, in materia de observantia legalium. Et certum est quod Iudaei, absentes a Iudaea, sive essent in peccato sive non, habebant ignorantiam de baptismo invincibilem⁴ aut de fide Christi.⁵ Sicut ergo tunc poterat cadere ignorantia invincibilis de hoc, ita et nunc apud eos, apud quos non est facta annuntiatio de baptismo. Sed in hoc decipiuntur isti doctores, quia putant quod, si ponamus ignorantiam invincibilem de baptismo aut fide Christi, quod⁶ statim consequitur quod possit aliquis salvari sine baptismo aut fide Christi, quod tamen non sequitur. Barbari enim, ad quos non pervenit annuntiatio fidei aut religionis Christianae, damnabuntur propter peccata mortalia aut idolatriam, sed non propter peccatum infidelitatis, ut dicit S. Thomas (*Secunda Secundae*, ubi supra)⁷ quod, si facerent quod in se est bene vivendo secundum legem naturae, ita est quod Dominus provideret et illuminaret⁸ illos circa nomen Christi; non ideo tamen sequitur quod, si male vivant, imputetur eis ad peccatum ignorantia aut infidelitas circa baptismum et fidem Christianam.

10. Secunda propositio: Barbari non ad primum nuntium fidei Christianae tenentur credere,⁹ ita quod¹⁰ peccent mortaliter non credentes¹¹ solum per hoc, quod simpliciter annuntiatur eis et proponitur quod vera religio est Christiana et quod Christus est Salvator et Redemptor mundi, sine miraculis aut quacumque alia probatione aut suasionem. Probatur haec conclusio ex prima: Si enim, antequam aliquid audissent de religione Christiana, excusabantur, non obligantur de novo per huiusmodi simplicem propositionem et annuntiationem, cum talis annuntiatio nullum sit argumentum aut motivum ad credendum. Immo, ut Caietanus ait (*Secunda Secundae*, qu. 1, art. 4¹²), temere et imprudenter quis crederet aliquid, maxime in his, quae spectant ad salutem, nisi cognoscat a viro fide digno

¹S has *contrario* simply.

³B has *ignorabant*.

⁵B omits *aut de fide Christi*.

⁷B omits the words in parentheses. The reference is to the passage from qu. 10, art. 1, quoted on p. 246.

²B omits preceding nine words.

⁴M has *invincibilem de baptismo*.

⁶For repetition of this *quod*, see p. 204.

⁸S has *illuminat*. ⁹M adds *ipsum*. ¹⁰Classical Latin requires *ita ut*. ¹¹B inserts *Christo* here.

¹²Vol. VIII, page 15, of the edition used: "Quoniam nullus audiens aliquid vere ac prudenter credit illud nisi ad sensum cognoscat a viro fide digno illud asseri," etc., to great length.

illud adseri—quod barbari non cognoscunt,¹ cum ignorent qui aut quales sint, qui eis novam religionem proponunt. Et confirmatur, quia, ut ait S. Thomas (*Secunda Secundae*, qu. 1, art. 4, ad secundum,² et art. 5, ad primum,³ “ea, quae sunt fidei, sunt visa et evidentia sub ratione credibilis. Non enim fidelis crederet, nisi videret ea esse credenda vel propter evidentiam signorum vel propter aliquod huiusmodi.” Ergo, ubi neque huiusmodi signa neque aliquod aliud ad persuadendum concurrit, non tenentur barbari credere. Et confirmatur, quia, si simul Saraceni eodem modo proponerent barbaris sectam suam simpliciter, sicut Christiani, non tenerentur eis credere, ut certum est. Ergo nec Christianis sine aliquo motivo et suasionem proponentibus, quia non possunt nec tenentur divinare utra sit verior religio, nisi appareant probabiliora motiva pro altera parte. Hoc enim esset cito credere, quod est levis corde, ut dicit *Ecclesiasticus*, cap. 19.⁴ Et confirmatur per illud *Ioan.*, 15⁵: “Si signa non fecissem,” etc., “peccatum non haberent.” Ergo, ubi nulla fiunt signa neque motiva, nullum erit peccatum.

Confirm. 1.

Confirm. 2.

Confirm. 3.

370 11. Ex qua propositione sequitur quod, si solum illo modo proponatur fides barbaris et non recipiant, non hac ratione possunt⁶ Hispani inferre illis bellum neque iure belli contra eos agere. Patet, quia sunt innocentes quantum ad hoc, nec fecerunt aliquam iniuriam Hispanis. Et confirmatur hoc corollarium, quia, ut S. Thomas tradit (*Secunda Secundae*, qu. 40, art. 1⁷), ad bellum iustum “requiritur causa iusta, ut scilicet illi, qui impugnantur, propter aliquam culpam impugnationem mereantur. Vnde Augustinus dicit (*Libro 83 Quaestionum*)⁸: ‘Iusta bella solent diffiniri, quae⁹ ulciscuntur iniurias, si gens vel civitas plectenda est, quae vel vindicare neglexerit quod a suis improbe factum est, vel reddere quod per iniuriam ablatum est.’” Si ergo nulla praecessit a barbaris iniuria, nulla est causa iusti belli. Et haec est sententia communis omnium doctorum, non solum theologorum, sed etiam iurisconsultorum,¹⁰ ut¹¹ Hostiensis, Innocentii, et aliorum. Et ponit eam diserte Caietanus (*Secunda Secundae*, qu. 66, art. 8), nec scio aliquem doctorem, qui oppositum sentiat. Vnde hic non esset legitimus titulus ad occupandas provincias barbarorum et spoliandos priores dominos.

Probatur
propositio
ex sententia
communi
doctorum.

¹B has cognoscent.

²Ad secundum dicendum quod ea, quae subsunt fidei, dupliciter considerari possunt. Uno modo, in speciali, et sic non possunt esse simul visa et credita, sicut dictum est. Alio modo, in generali, scilicet sub communi ratione credibilis, et sic sunt visa ab eo, qui credit. Non enim crederet, nisi videret ea esse credenda vel propter evidentiam signorum vel propter aliquid huiusmodi.”

³Ad primum ergo dicendum quod infideles eorum, quae sunt fidei, ignorantiam habent, quia nec vident aut sciunt ea in se ipsis, nec cognoscunt ea esse credibilia. Sed per hunc modum fideles habent eorum notitiam, non quasi demonstrative, sed in quantum per lumen fidei videntur esse credenda, ut dictum est.”

⁴V. 4: “Qui credit cito, levis corde est,” etc.

⁵V. 24: “Si opera non fecissem in eis,” etc.

⁶S has non possint hac ratione.

⁷Words as given above, except that Sr. THOMAS has in libro *Quaestionum* and *definiri*. The above is the second of three requirements laid down by Sr. THOMAS for a just war; the other two are the authority of the prince and right intention.

⁸This is a mistake (cf. p. 274); the reference is to *Quaestiones in Heptateuchum*, lib. vi (*Quaestiones in Iesum Nave*, qu. 10: “Iusta autem bella definiri solent, quae ulciscuntur iniurias, si qua gens vel civitas, quae bello petenda est, vel vindicare neglexerit quod a suis improbe factum est, vel reddere quod per iniurias ablatum est.”

⁹M has qui.

¹⁰B has consultorum.

¹¹S adds ait.

- III Prop. 12. Tertia propositio: Si barbari, rogati et admoniti ut audiant 371
 pacifice loquentes de religione, nollent audire, non excusarentur a peccato
 Prob. 1. mortali. Probatur, quia, ut supponimus, illi habent gravissimos errores,
 de quibus non habent rationes verisimiles¹ aut probabiles. Ergo, si quis
 Prob. 2. admoneat eos ut audiant ac deliberent de rebus spectantibus ad religionem,
 tenentur saltem audire et consultare. Item necessarium est eis ad salutem
 credere in Christum et baptizari (*Marc.*, ult.²: "Qui crediderit," etc.). Sed
 non possunt credere, nisi audiant (*ad Rom.*, 10³). Ergo tenentur audire,
 alias essent extra statum salutis sine culpa sua, si non tenentur audire.
- IV Prop. 13. Quarta propositio: Si fides Christiana proponatur barbaris
 probabiliter, i. e., cum argumentis probabilibus et rationalibus et cum vita
 honesta et secundum legem naturae studiosa,⁴ quae magnum est argumen-
 tum ad confirmandam veritatem, et hoc non semel et perfunctorie, sed
 diligenter et studiose, barbari tenentur recipere fidem Christi sub poena
 peccati mortalis. Probatur ex tertia conclusione, quia, si tenentur audire,
 ergo et acquiescere auditis, si sunt rationabilia. Et patet manifeste⁵ ex
 illo *Marci* ultimo⁶: "Euntes in mundum universum, praedicate Evan-
 gelium omni creaturae. Qui crediderit, et baptizatus fuerit, salvus erit; 372
 qui vero non crediderit, condemnabitur." Et per illud *Act.*, 4⁷: "Non est
 aliud nomen datum hominibus in quo oporteat nos salvos fieri."
- V Prop. 14. Quinta⁸ conclusio⁹: Non satis liquet mihi an fides Christiana
 fuerit barbaris hactenus ita proposita et annuntiata, ut teneantur credere
 sub novo peccato. Hoc dico, quia (ut patet ex secunda propositione) non
 tenentur credere, nisi proponatur eis fides cum probabili persuasionem. Sed
 miracula et signa nulla audio nec exempla vitae adeo religiosa, immo¹⁰
 contra multa scandala et saeva¹¹ facinora et multas impietates. Vnde non
 videtur quod religio Christiana satis commode et pie sit illis praedicata,
 ut illi teneantur acquiescere, quanquam videntur multi religiosi et alii
 ecclesiastici viri et vita et exemplis et diligenti praedicatione sufficienter
 operam et industriam adhibuisse in hoc negotio, nisi ab aliis, quibus alia
 cura est, impediti essent.
- VI Prop. 15. Sexta propositio: Quantumcumque fides annuntiata sit barbaris
 probabiliter et sufficienter et noluerint eam recipere, non tamen hac ratione
 Prob. 1. licet eos bello persequi et spoliare bonis suis. Haec conclusio est expressa
 S. Thomae (*Secunda Secundae*, qu. 10, art. 8¹²), ubi dicit "quod infideles, qui
 nunquam susceperunt fidem, sicut Gentiles et Iudaei, nullo modo sunt 373
 compellendi ad fidem." Et est conclusio communis doctorum etiam in iure
 canonico et civili. Et probatur, quia credere est voluntatis. Timor
- Prob. 2.

¹M has *verisimiles*.²Cap. 16, v. 16: "Qui crediderit, et baptizatus fuerit, salvus erit; qui vero non crediderit, condemnabitur."³V. 14: "Quomodo credent ei quem non audierunt? Quomodo autem audient sine praedicatione?"⁴B has *studiosam*.⁵B has *magnifeste*.⁶Cap. 16, vv. 15-16.⁷V. 12; VULGATE has: "Nec enim aliud nomen est sub caelo datum," etc., as above.⁸B has *Secunda*.⁹M has *propositio*.¹⁰B omits *immo*.¹¹B and S have *seu*. The reading of B is accounted for by the fact that B might easily have misread "& sequa" in the manuscripts. M, who saw B as well as the manuscripts, evidently intended correcting B. S, who saw only B and M and not the manuscripts, followed B.¹²"Respondeo dicendum quod infidelium quidam sunt qui nunquam susceperunt fidem, sicut Gentiles et Iudaei. Et tales nullo modo sunt ad fidem compellendi ut ipsi credant, quia credere voluntatis est."

autem multum minuit de voluntario (tertio *Ethicorum*) et ex timore servili dumtaxat accedere ad mysteria et sacramenta Christi sacrilegum est. Item probatur ex can. *de Iudaeis*,¹ Dist. 45: "De Iudaeis autem praecepit sancta synodus nemini deinceps ad credendum vim inferre. 'Cui enim vult Deus miseretur, et quem vult indurat.'"² Non est dubium quin sententia Concilii Toletani sit, ut non agatur cum Iudaeis minis et terroribus ad recipiendam fidem. Et idem dicit expresse Gregorius (in can. *qui sincera*,³ eadem Dist.): "Qui sincera," inquit, "intentione extraneos a Christiana religione ad fidem cupiunt perfectam perducere,⁴ blandimentis debent, non asperitatibus studere,⁵ nam quicumque aliter agunt, et eos sub hoc velamine a consueta sui ritus voluerint cultura remove, suas illic magis, quam Dei causas probantur⁶ attendere." Item probatur propositio⁷ ex usu et consuetudine Ecclesiae. Nunquam enim Imperatores Christiani, qui sanctissimos et sapientissimos Pontifices a consilio⁸ habebant, bellum intulerunt infidelibus eo, quod nollent recipere Christianam religionem. Item bellum nullum argumentum est pro veritate fidei Christianae. Ergo per bellum barbari non possunt moveri ad credendum, sed ad fingendum se credere et recipere fidem Christianam, quod immane et sacrilegum est. Et, quamvis Scotus (in *Quartum*, dist. 4, qu. ult.⁹) dicat quod religiose fieret, si infideles cogerentur a principibus minis et terroribus ad fidem, hoc tamen non videtur intellegere nisi de infidelibus, qui alias sunt subditi principum Christianorum, de quibus postea dicitur. Barbari autem non sunt tales. Vnde puto quod nec Scotus hoc¹⁰ adserit¹¹ de barbaris istis. Patet itaque quod neque iste titulus idoneus est et legitimus ad occupandas provincias barbarorum.

Prob. 3.

Prob. 4.

Prob. 5.

Scoti de hac re sententia exponitur.

Alius titulus praetenditur serio et est titulus quintus, scilicet peccata ipsorum barbarorum. Dicunt enim quod, licet non possint bello infestari ratione infidelitatis suae aut quia non recipiunt fidem Christianam, possunt tamen bello peti propter alia peccata mortalia, quae multa habent et ipsa gravissima, ut aiunt. Circa peccata autem mortalia distinguunt.¹² Dicunt enim quod, cum sint aliqua¹³ peccata, quae non sunt contra legem naturae,

Quintus titulus tractatur.

¹*Decr.*, I, 45, 5, which is an excerpt from the Proceedings of the Fourth Council of Toledo, cap. 56. FRIEDBERG adopts the spellings *Iudeis*, *precepit*, and *synodus*, and the reading *vim ad credendum*.

²*Ad Rom.*, cap. 9, v. 18.

³*Decr.*, I, 45, 3, which is an excerpt from POPE GREGORY I, *Epist. ad Pascasium Episcopum Neapolitanum* (lib. XI, epist. 15).

⁴Instead of *perfectam perducere*, FRIEDBERG adopts the reading *rectam adducere*.

⁵Here VICTORIA omits the following: "ne quorum mentem reddita a plano ratio poterat provocare, pellat procul adversitas."

⁶FRIEDBERG adopts the readings *ritus sui volunt* and *probantur causas*. ⁷B has *quaestio*.

⁸B has *concilio*, while S has *consiliis*. There is no need, however, to change to the plural here.

⁹In *Libros IV Sententiarum*, lib. 4, dist. 4, part. 3, sect. ult. (De parvulis Iudaeorum et infidelium: an sint invitis parentibus baptizandi): "Istud autem de parentibus infidelibus cogendis per minas et terrores videtur probari, quia sicuti commendat illud Concilium Tolletanum supra allegatum."

¹⁰B omits *hoc*.

¹¹M has *assereret*, which some later editor, mistaking the *ff* for *ff*, changed to *afferret*, found in S. Here again is seen the result of the improving hand of M. ¹²M has *distingunt*.

¹³M has *quod sunt aliqua*, while S has *quod sunt alia*. This seems to be an instance of M trying to secure symmetry of expression (see p. 252, n. 3). Because he finds *alia sunt* and *et probis* in the parallel clause which follows, he changes the *cum sint* and *pro his* to *sunt* and *et pro his* in the first clause. It is a later editor who completes M's work, by changing *aliqua* to *alia*, which is found in S.

Recitatur et
explicatur
sententia
Archiepisco-
pi, Augustini
Anconitani,
Sylvestri,
Innocentii
docentium
hunc titulum
esse legiti-
mum.

Respons.
auctoris.

Prob. 1.

Prob. 2.

sed solum contra legem divinam positivam, pro his¹ barbari non possunt in- 375
festari bello²; alia autem sunt contra naturam, ut esus carnis humanae, con-
cubitus indifferens cum matre, sororibus, et cum masculis, et pro his pos-
sunt infestari bello et cogi ut ab his desistant. Et ratio utriusque est, quia
circa alia peccata, quae sunt contra legem positivam, non potest eis ostendi
evidenter quod male faciant; circa alia autem³ contra legem naturae,
potest eis ostendi quod offendunt Deum et per consequens possunt⁴ coër-
ceri ne offendant Deum.⁵ Praeterea possunt cogi ut servant legem, quam
ipsi profitentur. Ea autem est lex naturae. Ergo.⁶ Haec est opinio
Archiepiscopi Florentini (part. 3, tit. 22, cap. 5, § 8) post Augustinum
Anconitanum,⁷ idem Sylvestri (in verbo *Papa*, § 7); et est opinio Inno-
centii in cap. *quod super his*,⁸ De voto,⁹ ubi expresse dicit, "Credo quod si
Gentiles, qui non habent nisi legem naturae, contra legem naturae faciant,
poterunt per Papam puniri. Arguitur¹⁰ *Gen.*, 19, ubi Sodomitae puniti
sunt a Deo. Cum autem Dei iudicia sint nobis exemplaria, non video
quare Papa, qui est vicarius Christi, hoc non possit." Haec Innocentius.
Et eadem ratione poterunt auctoritate Papae puniri a principibus Chri-
stianis.

16. Sed pono conclusionem¹¹: Principes Christiani, etiam auctoritate
Papae, non possunt coërtere barbaros a peccatis contra legem naturae nec 376
ratione illorum eos punire. Probatur primo, quia isti praesupponunt
falsum,¹² quod Papa habeat iurisdictionem in illos, ut supra dictum est.
Secundo, quia vel intellegunt universaliter pro peccatis contra legem
naturae, ut pro furto, fornicatione, adulterio, vel peculiariter pro peccatis
contra naturam, de quibus S. Thomas (*Secunda Secundae*, qu. 154, art. 11¹³
et 12¹⁴), quo modo peccatum contra naturam dicitur non solum quia est
contra legem naturae, sed contra ordinem naturalem, quod¹⁵ (II *ad Cor.*,
2¹⁶) vocatur immunditia, secundum glossam, ut concubitus puerilis
et¹⁷ bestialis, vel feminae ad feminam, de quo *ad Rom.*, 1.¹⁸ Si secundo
modo solum, contra arguitur, quia homicidium est ita grave, vel gravius
peccatum, et ita manifestum quod, si pro illis licet, ergo et pro homicidio.
Item blasphemia est ita grave peccatum et ita manifestum; ergo.¹⁹ Si
primo modo, i. e., generaliter pro omni peccato contra legem naturae,

¹See note 13 on page 251.

²B omits *bello*.

³M inserts *quae sunt* perhaps to secure symmetry with preceding parallel clause.

⁴B omits *possunt*.

⁵M has *offendant eum amplius*.

⁶B omits *Ergo*.

⁷*Summa de ecclesiastica potestate*, qu. 23, arg. 4, resp. After making a distinction between eternal, natural, and positive law, he says: "Nam unusquisque iuste potest puniri pro transgressione illius legis quam recipit et quam proficitur observare. . . . Pagani vero et omnes barbarae nationes per legem divinam veteris vel Novi Testamenti convinci non possunt. Nec per legem positivam, cum neutram recipiant. Unde sicut per legem naturae quam coguntur profiteri convinci possunt, ita per ipsam possunt iuste puniri."

⁸*Decl.*, 3, 34, 8, which is an excerpt from POPE INNOCENT III, *Epist. ad Cantuariensem Archiepiscopum*.

⁹The full title is *De voto et voti redemptione*.

¹⁰M has *Et arguitur ex*.

¹¹B has *corollarium*. This may be an improvement of M's.

¹²M inserts *videlicet* here.

¹³"Sed contra est quod II *ad Cor.*, 12, connumeratur aliis luxuriae speciebus, ubi dicitur: 'Non egerunt poenitentiam super immunditia et fornicatione et impudicitia'; ubi dicit glossa: 'Immunditia, i. e., luxuria contra naturam.'"

¹⁴B has *arti. 11. ad secundum*.

¹⁵B has *de quo*.

¹⁶The passage referred to is not in cap. 2, but in cap. 12, v. 21.

¹⁷S omits *et*.

¹⁸V. 26: "Nam feminae eorum immutaverunt naturalem usum, in eum usum qui est contra naturam."

¹⁹B omits *ergo*.

contra pro fornicatione non licet; ergo nec pro aliis peccatis, quae sunt¹ contra legem naturae. Antecedens patet (I ad Cor., 5): "Scripsi vobis in epistola, ne commisceamini fornicariis."² Et praeterea,³ "si quis⁴ frater nominatur inter vos⁵ fornicator, aut idolis serviens,"⁶ etc., et infra: "Quid enim mihi de his, quae foris sunt, iudicare"⁷; ubi S. Thomas⁸ dicit, "Praelati acceperunt potestatem super eos tantum, qui se fidei⁹ subdiderunt." Vbi aperte patet quod Paulus dicit non spectare ad eum iudicium de infidelibus et fornicariis aut¹⁰ idololatriis. Item nec omnia peccata contra legem naturae possunt evidenter ostendi, saltem omnibus. Item hoc tantundem est dicere, ac si quis dicat quod propter infidelitatem liceat barbaros debellare, omnes enim sunt idololatrae. Item non licet Papae inferre bellum Christianis, quia sunt fornicarii aut fures, immo quia sunt¹¹ cinaedi; nec ideo potest publicare terras eorum et dare aliis principibus; hoc enim modo, cum in omni provincia sint multi peccatores, cottidie possent mutari regna. Et confirmatur; graviora enim peccata sunt haec apud Christianos, qui sciunt illa esse peccata, quam apud barbaros, qui ignorant esse peccata. Item mirum est quod Papa non possit ferre leges infidelibus et possit exercere iudicia et inferre poenas.

Confirm.

Prob. 3.

Item arguitur, et certe videtur convincere, quia vel barbari tenentur ferre poenas illatas pro illis peccatis vel non. Si non tenentur, ergo nec Papa potest inferre. Si tenentur, ergo tenentur recognoscere Papam tanquam dominum et legislatorem. Ergo, si non recognoscant,¹² iam propter hoc solum potest eis inferri bellum, quod tamen¹³ isti negant, ut supra dictum est. Et profecto¹⁴ mirum est quod possint¹⁵ impune negare auctoritatem et iurisdictionem Papae et tamen teneantur subire iudicium eius. Item non possunt acceptare iudicium Papae, qui non sunt Christiani, nullo enim alio iure Papa potest eos condemnare aut punire, nisi quia vicarius Christi. Sed isti fatentur, tam Innocentius quam¹⁶ Augustinus Anconitanus,¹⁷ quam etiam Archiepiscopus et Sylvester,¹⁸ quod non possunt puniri, quia non recipiunt Christum. Ergo nec quia non recipiunt iudicium Papae, hoc enim praesupponit illud.

Prob. 4.

Prob. 5.

Et confirmatur quod nec iste titulus nec praecedens sit sufficiens, quia etiam¹⁹ in Veteri Testamento, ubi tamen²⁰ armis res gerebatur,²¹ unquam populus Israël occupavit terras infidelium, vel quia essent infideles et

Refutatio communis huius et proxime antecedentis tituli.

¹B omits *quae sunt*.²I ad Cor., cap. 5, v. 9.³So M; B has *et primum* (cf. p. 195), while S has simply *et*.⁴S has *sitis qui*, VULGATE *si is qui*.⁵S has *est* (following the VULGATE) in place of *inter vos*, which is found in B and M.⁶I ad Cor., cap. 5, v. 11; VULGATE has *aut avarus* before *aut idolis serviens*, etc.⁷I ad Cor., cap. 5, v. 12; VULGATE has *iis qui for his quae*.⁸Commentarii in Epist. ad Corinth. I, cap. 5, lectio 3: "Praelati enim Ecclesiarum accipiunt spirituales potestates super eos tantum qui se fidei subdiderunt."⁹M improves the word order by having *fidei se*.¹⁰M omits *aut*.¹¹M omits *sunt*.¹²B has *recognoscatur*; concerning the confusion of the third person singular passive with the third person plural active, see p. 271, n. 4.¹³M has *etiam*.¹⁴S omits *et* and has *dictum est profecto*.¹⁵B and S have *possunt*.¹⁶B omits *quam*.¹⁷Summa de ecclesiastica potestate, qu. 23, arg. 3, on obj. 3: "Cum," sc. Saraceni et infideles, "Christianis velint pacifice conversari, non debent eis tolli illa quae sine peccato possunt possidere."¹⁸In verbo *infidelitas*, § 7.¹⁹B and S have *enim*.²⁰B has *tam*.²¹M has *gerebantur*.

- I. idololatrae vel quia haberent alia peccata contra naturam (qui multa habebant, quia erant idololatrae et alia peccata contra naturam habebant, ut quia sacrificabant filios suos et filias suas daemioniis), sed vel ex speciali¹
- II. dono Dei vel quia transitum impediabant vel eos offenderant. Item quid² isti vocant profiteri legem naturae? Si est cognoscere, non totam cognoscunt; si est velle servare legem naturae, contra etiam volunt servare 379 totam legem divinam, si enim scirent legem Christianam esse divinam, vellent servare. Ergo non magis profitentur legem naturae quam Christianam. Item profecto maiores probationes habemus ad probandum legem Christi esse a Deo et esse veram quam ad probandum quod fornicatio est mala, vel querenda³ alia, etiam lege naturali prohibita. Ergo si possunt cogi ad observandum legem naturae, quia potest probari, ergo etiam ad observationem legis Evangelicae.
- III.

Sextus titulus tractatur.

Restat alius et sextus titulus, qui praetenditur,⁴ scilicet per electionem voluntariam. Hispani enim cum ad barbaros perveniunt, significant eis quemadmodum Rex Hispaniae mittit eos pro commodis eorum, et admonent eos ut illum pro domino et rege recipiant et acceptent, et illi retulerunt placere sibi. Et "nihil tam naturale est, quam voluntatem domini, volentis rem suam in alium transferri, ratam haberi" (*Inst.*, De rerum divisione, § *per traditionem*⁵). Sed ego pono conclusionem⁶ quod⁷ nec iste titulus est idoneus. Patet primo, quia deberet abesse metus et ignorantia, quae vitiant omnem electionem. Sed haec intervenit in illis electionibus et acceptationibus; nesciunt enim barbari quid faciunt, immo forte nec 380 intellegunt quid petunt Hispani. Item hoc petunt circumstantes armati ab imbelli turba et meticulosa. Item, cum illi (ut supra dictum est) haberent veros dominos et principes, non potest populus sine alia rationabili causa accersere novos dominos, quod est in detrimentum priorum. Item⁸ nec e contrario ipsi domini possunt novum principem creare sine assensu populi. Cum ergo in huiusmodi electionibus et acceptationibus non concurrant omnia requisita ad legitimam electionem, omnino ille titulus non est idoneus nec legitimus ad occupandas et obtinendas illas provincias.

Septimus titulus.

Septimus titulus est,⁹ qui possit praetendi, scilicet ex speciali dono Dei. Dicunt enim nescio qui quod Dominus in suo peculiari iudicio condemnavit istos barbaros omnes ad perditionem propter abominationes suas et tradidit in manus Hispanorum, sicut olim Chananaeos in manus Iudaeorum. Sed de hoc nolo multum disputare, quia periculose crederetur alicui prophetiam adserenti contra communem legem et contra regulas Scripturae, nisi miraculis confirmaretur doctrina sua, quae tamen nulla proferuntur 381 ab huiusmodi prophetis. Item, dato quod ita esset, quod Dominus perditionem barbarorum facere constituisset, non tamen ideo consequitur quod ille, qui eos perderet, esset sine culpa, sicut nec erant sine culpa Reges

Refutatur ab auctore.

- 1.
- 2.

¹B has *spirituali*.

²M has *quia*.

³So M; B has *querēda*, and S has *cavēda*, but in the margin *alias querēda*.

⁴M has *qui potest praetendi vel praetenditur*.

⁵*Inst.*, 2, 1, 40; KRUEGER has *nihil enim tam conveniens est naturali aequitati, quam, etc.*

⁶B has *Et est conclusio*.

⁷M omits *quod*.

⁸S has *Sicut*.

⁹B and S omit *est*.

Babyloniae, qui contra Ierusalem¹ ducebant exercitum et filios Israël ducebant in captivitatem, licet re vera totum fuerit ex peculiari providentia Dei, sicut saepe illis² erat praedictum. Nec Ieroboam recte avertit populum Israël a Roboam, quamvis hoc factum fuisset consilio³ Domini, sicut etiam Dominus per prophetam comminatus fuerat. Et utinam, 3. secluso peccato infidelitatis, non sint maiora peccata in moribus apud aliquos Christianos quam sunt inter illos barbaros! Scriptum quoque⁴ est 4. (I Ioan., 4⁵): "Nolite credere omni spiritui, sed probate spiritus, utrum ex Deo sint." Et, ut⁶ ait S. Thomas (*Prima Secundae*, qu. 68), dona dantur a Spiritu sancto ad perficiendum virtutes. Vnde ubi fides aut auctoritas aut providentia ostendit quid agendum sit, non est recurrendum ad dona.

Haec de falsis et non idoneis titulis occupandi provincias barbarorum sufficiant. Sed notandum quod ego nihil vidi scriptum de hac quaestione 382 posset, ut alii fortasse fundent titulum et iustitiam huius negotiationis et principatus in aliquo praedictorum locorum, non sine ratione aliqua. Sed ego hactenus non possum aliud intellegere nisi quod dictum est. Vnde, si non essent alii tituli quam isti, profecto male consultum esset saluti principum, vel potius eorum, ad quos spectat haec detegere⁷; nam principes sequuntur aliorum consilium, quia per se haec examinare non possunt. "Quid prodest," inquit Dominus,⁸ "homini, si universum mundum lucretur, seipsum vero perdat et detrimentum sui faciat?" *Matth.*, 16,⁹ et *Marc.*, 8,¹⁰ et *Luc.*, 9.¹¹

Excusatio
auctoris.

¹B has *Ieroboam*, perhaps through confusion with the same word farther on.

²B has *illud*.

³B has *concilio*.

⁴B omits *quoque*.

⁵V. 1; VULGATE has *credere* after *spiritui* and has *si* in place of *utrum*.

⁶B omits *ut*.

⁷So M; B has *dirigere* and S has *dedegere*. This may be an improvement of M's.

⁸B omits *inquit Dominus*.

⁹V. 26: "Quid enim prodest homini, si mundum universum lucretur, animae vero suae detrimentum patiat?"

¹⁰V. 36: "Quid enim proderit homini, si lucretur mundum totum, et detrimentum animae suae faciat?"

¹¹V. 25: "Quid enim proficit homo, si lucretur universum mundum, se autem ipsum perdat, et detrimentum sui faciat?"

SECTIONIS TERTIAE,¹

De titulis legitimis,² quibus barbari potuerint venire in dicionem Hispanorum,

SVMMA.³

1. Barbari quomodo potuerunt venire in dicionem Hispanorum ratione naturalis societatis et communitatis.
2. Hispani habent ius peregrinandi ad Indorum barbarorum provincias et illic degendi, sine tamen eorum nocumento aliquo; nec possunt ab illis 383 prohiberi.
3. Hispanis licet apud Indos barbaros negotiari, sine patriae tamen incommodo, importando merces, quibus illi carent, etc., et efferendo inde aurum et argentum vel alia, quibus abundant; nec illorum principes possunt impedimento esse quominus subditi exercent commercia cum Hispanis, etc.
4. Barbaris non licet prohibere Hispanos a communicatione et participatione illorum, quae apud eos sunt communia, tam civibus quam hospitibus.
5. Liberi si apud Indos nascuntur ex parentibus Hispanis illic domicilium habentibus et velint esse eius cives, non possunt arceri vel a civitate vel a commodo aliorum civium.
6. Barbari si vellent prohibere Hispanos quominus exercerent cum illis commercia, etc., quid esset agendum.
7. Hispani si, omnibus modestissime tentatis, non possunt consequi securitatem cum barbaris seu Indis, nisi civitates occupando et subiciendo illos, an hoc facere licite possint.
8. Hispani quando et in quo casu possent saevire in barbaros, tanquam in per- 384 fidos hostes, et in illos omnia belli iura prosequi, eos spoliare, immo et in captivitatem redigere, quin etiam et dominos priores deponere et novos constituere.
9. An barbari causa religionis Christianae propagandae potuerint in Hispanorum dicionem venire. Et Christiani habent ius praedicandi et annuntiandi Evangelium in provinciis barbarorum.
10. Papa potuit negotium conversionis Indorum barbarorum solis Hispanis demandare, et omnibus aliis, non solum praedicationem, sed etiam commercium, interdicere, si ita expediret ad Christianae religionis propagationem.
11. Barbari non sunt debellandi neque bonis privandi, si permittant Hispanos libere et sine impedimento Evangelium praedicare, sive illi fidem recipiant sive non.
12. Barbari, sive eorum domini sive ipsa multitudo, impediens Evangelii promulgationem, quomodo ab Hispanis (absque tamen scandalo) possint coërceri. Et quid dicendum de his, qui praedicationem admittunt, conversionem tamen aut interficientes aut punientes sive terrentes ad 385 Christum conversos impediunt.
13. Barbari quomodo potuerunt in Hispanorum dicionem venire eo, quod, cum essent conversi et Christiani effecti, eorum principes vi aut metu volentes eos ab idololatria revocare, ab Hispanis fuerint protecti et sub eorum tutelam recepti.

¹B and M omit *sectionis tertiae*.

²B and M omit *legitimis*.

³See p. 217, n. 3.

14. Barbari in Hispanorum venire potuerunt dicionem, quia, cum bona pars eorum esset ad Christum conversa, Papa, illis petentibus aut non petentibus, potuit ex rationabili causa dare illis Christianum principem, ut est Hispanorum Rex, aliis dominis infidelibus repulsis.
15. An barbari in dicionem Hispanorum venire potuerint propter tyrannidem suorum dominorum vel propter leges tyrannicas in iniuriam innocentium.
16. Barbari Indi quod potuerint in Hispanorum dicionem venisse per veram et voluntariam electionem.
17. Barbari societatis et amicitiae titulo potuerunt venire in dicionem Hispanorum.
18. An Hispani potuissent barbaros redigere sub suam dicionem, si certo constaret eos esse amentes.

386 Nunc dicam de legitimis titulis et idoneis, quibus barbari venire potuerunt in dicionem Hispanorum.

1. Primus titulus potest vocari naturalis societatis et communicationis.¹

Primus titulus legitimus.
I Prop.

2. Et circa hoc sit prima conclusio: Hispani habent ius peregrinandi in illas provincias et illic degendi, sine aliquo tamen nocumento barbarorum, nec possunt ab illis prohiberi. Probatur primo ex iure gentium, quod vel est ius naturale vel derivatur ex iure naturali (*Inst.*, De iure naturali et gentium²): "quod naturalis ratio inter omnes gentes constituit, vocatur³ ius gentium."⁴ Sic enim⁵ apud omnes nationes habetur inhumanum sine aliqua speciali causa hospites et peregrinos male accipere; e contrario autem humanum et officiosum se⁶ habere bene erga hospites; quod non esset, si peregrini male facerent, accedentes in⁷ alienas nationes.

Prob. 1.

Secundo, a principio orbis (cum omnia essent communia) licebat⁸ unicuique, in quamcumque⁹ regionem vellet, intendere et peregrinari. Non autem videtur hoc demptum per rerum divisionem; nunquam enim fuit intentio gentium per illam divisionem tollere hominum invicem communicationem, et⁹ certe temporibus Noë fuisset inhumanum.

Prob. 2.

387 Tertio, omnia licent, quae non sunt prohibita aut alias sunt in iniuriam aut detrimentum¹⁰ aliorum. Sed (ut supponimus) talis peregrinatio Hispanorum est sine iniuria aut damno barbarorum. Ergo est licita.¹¹

Prob. 3.

Quarto, non liceret Gallis prohibere Hispanos a peregrinatione Galliae, vel etiam habitatione, aut e contrario, si nullo modo cederet in damnum illorum nec facerent iniuriam. Ergo nec barbaris.

Prob. 4.

Item quinto, exsilium est poena etiam inter capitales. Ergo non licet relegare hospites sine culpa.

Prob. 5.

Item sexto, haec est una pars belli, prohibere aliquos tanquam hostes a civitate vel provincia vel expellere iam existentes. Cum ergo barbari non habeant iustum bellum contra Hispanos, supposito quod sint innoxii, ergo non licet illis prohibere Hispanos a patria sua.

Prob. 6.

¹M omits this sentence and B has it before *Nunc dicam*.

²The full title is *De iure naturali et gentium et civili*.

³B has *constituitur, vocat*.

⁴*Inst.*, 1, 2, 1; KRUEGER has: "quod vero naturalis ratio inter omnes homines constituit, id apud omnes populos peraeque custoditur vocaturque ius gentium, quasi quo iure omnes gentes utuntur." For explanation of VICTORIA's substitution of *gentes* for *homines*, see H. F. WRIGHT, *Francisci de Victoria De Iure Belli Relectio* (Washington, 1916), p. 16, and the authorities there cited.

⁵M omits *Sic* and has the *enim* after *omnes*.

⁶M omits *se*.

⁷M has *ad*.

⁸S has *quamque*.

⁹S omits *et*.

¹⁰B has *in iniuria aut detrimento*.

¹¹B has *licitū*.

- Prob. 7. Item septimo, facit illud poetae,¹
 Quod genus hoc hominum? quaeve hunc tam barbara morem
 Permittit patria? hospitio prohibemur arenae.²
- Prob. 8. Item octavo, "Omne animal diligit sibi simile" (*Eccli.*, 17³). Ergo videtur quod amicitia inter homines sit de iure naturali, et⁴ contra naturam est vitare consortium hominum innoxiorum.
- Prob. 9. Item nono, facit illud *Matth.*, 25⁵, "Hospes eram, et non collegistis me." Vnde, cum ex iure naturali videatur esse⁶ recipere hospites, illud Christi iudicium statuatur cum omnibus. 388
- Prob. 10. Decimo, "iure naturali communia sunt omnium, et aqua profluens et mare, item flumina et portus, atque naves iure gentium undecumque licet applicare" (*Inst.*, De rerum divisione⁷); et eadem ratione videtur publice.⁸ Ergo neminem licet ab illis prohibere. Ex quo sequitur quod barbari iniuriam facerent Hispanis, si prohiberent illos a suis regionibus.
- Prob. 11. Item undecimo, ipsi admittunt omnes alios barbaros undecumque. Ergo facerent iniuriam non admittentes Hispanos.
- Prob. 12. Item duodecimo, quia, si Hispanis non liceret peregrinari apud illos, vel hoc esset iure naturali aut divino aut humano. Naturali et divino certe licet. Si autem⁹ lex humana esset, quae prohiberet sine aliqua causa a iure naturali et divino, esset inhumana¹⁰ nec esset rationabilis et per consequens non haberet vim legis.
- Prob. 13. Decimo tertio, vel Hispani sunt subditi illorum vel non. Si non sunt subditi, ergo non possunt¹¹ prohibere. Si sunt subditi, ergo debent eos bene tractare.
- Prob. 14. Item decimo quarto, Hispani sunt proximi barbarorum, ut patet ex Evangelio (*Luc.*, 10¹²) de Samaritano. Sed tenentur diligere proximos (*Matth.*, 22¹³) sicut se ipsos. Ergo non licet prohibere illos a patria sua sine causa: (Augustini, *De doctrina Christiana*) "Cum dicitur, 'Diliges 389 proximum tuum,' manifestum est omnem hominem proximum esse."
- II Prop. 3. Secunda propositio: Licet Hispanis negotiari apud illos, sine patriae tamen damno, puta importantes¹⁴ illuc merces, quibus illi carent, et adducentes illinc vel aurum vel argentum vel alia, quibus illi abundant. Nec principes illorum possunt impedire subditos suos ne exerceant commercia cum Hispanis; nec e contrario principes Hispanorum possunt commercia cum illis prohibere.¹⁵ Probatur ex prima.
- Prob. 1. Primo, quia etiam hoc videtur ius gentium, ut sine detrimento civium peregrini commercia exerceant.

¹VERGIL, *Aeneid*, lib. 1, ll. 539-540. ²B has patriam hospitio, prohibemur arena?

³The reference is to *Ecclesiasticus*, cap. 13, v. 19: "Omne animal diligit simile sibi, sic et omnis homo proximum sibi." ⁴M adds quod. ⁵V. 43. ⁶B has cum iure naturali videantur.

⁷*Inst.*, 2, 1, 1, et seqq.: "Et quidem naturali iure communia sunt omnium haec: aer et aqua profluens et mare et per hoc litora maris. . . Flumina autem omnia et portus publica sunt. . . Riparum quoque usus publicus est iuris gentium, sicut ipsius fluminis; itaque navem ad eas appellere . . . cuilibet liberum est." The readings *naves* and *applicare* are listed by KRUEGER as variants.

⁸S has videntur publica.

⁹B omits autem.

¹⁰B and M have inhumanum.

¹¹S adds eos.

¹²Vv. 29-37.

¹³V. 39: "Diliges proximum tuum, sicut teipsum."

¹⁴B has exportantes.

¹⁵B has nec e contrario cum illis; S puts prohibere after possunt.

Item secundo, eodem modo probatur, cum hoc liceat iure divino. Prob. 2.
Ergo lex, quae hoc prohiberet, sine dubio¹ non esset rationalis.²

Item tertio, principes tenentur³ diligere Hispanos iure naturali. Ergo Prob. 3.
non licet eis, si potest fieri sine detrimento illorum, prohibere illos a com-
modis suis sine causa.

Quarto, quia videntur⁴ facere contra illud proverbium, "Non facies Prob. 4.
alteri, quod tibi fieri non vis."

Et in summa, certum est quod non plus possunt barbari prohibere Prob. 5.
Hispanos a commercio suo quam Christiani possunt prohibere alios Chri-
stianos. Clarum est autem quod, si Hispani prohiberent Gallos a com-
390 mercio Hispaniarum, non propter bonum Hispaniae, sed ne Galli participent
aliquam utilitatem, lex esset iniqua et contra caritatem. Si autem hoc
lege caveri iuste non potest, nec etiam facto fieri (quia lex non est iniqua,
nisi propter executionem legis). Et ut dicitur *ff.*, De iustitia et iure,
l. *ut vim*⁵, "inter homines omnes cognationem quandam natura constituit."
Vnde⁶ contra ius naturale est, ut homo hominem sine aliqua causa adver-
setur.⁷ "Non enim homini homo lupus est," ut ait Ovidius, "sed homo."

4. Tertia propositio: Si quae sunt apud barbaros communia, tam III Prop.
civibus quam hospitibus,⁸ non licet barbaris prohibere Hispanos a com-
municatione et participatione illorum. Exempli gratia, si licet aliis pere-
grinis vel effodere aurum in agro communi vel ex fluminibus vel piscari
margaritas in mari vel in flumine, non possunt barbari prohibere Hispanos,
sed eo modo dumtaxat quo aliis licet,⁹ dummodo¹⁰ cives et naturales incolae
non graventur. Haec probantur¹¹ ex prima et secunda. Nam, si licet Prob. 1.
Hispanis peregrinari et negotiari apud eos, ergo licet eis uti legibus et
commodis omnium peregrinorum.

Secundo, quia, quae in nullius bonis sunt, iure gentium sunt occupantis Prob. 2.
(*Inst.*, De rerum divisione,¹² § *ferae bestiae*¹³). Ergo, si aurum in agro vel
margaritae in mari aut aliud quodcumque in fluminibus non est appro-
391 priatum, iure gentium¹⁴ erit occupantis, sicut et pisces in mari. Et quidem¹⁵
multa hic¹⁶ videntur procedere ex iure gentium, quod,¹⁷ quia derivatur
sufficienter ex iure naturali, manifestam vim habet ad dandum ius et
obligandum. Et, dato quod non semper derivetur ex iure naturali, satis
videtur esse consensus maioris partis totius orbis, maxime pro bono com-
muni omnium. Si enim, post prima tempora creati orbis aut reparati post

¹B inserts *causa* here. ²B has *rationalis*. ³B and S have *principes tenetur*. ⁴B has *videtur*.

⁵*Dig.* I, I, 3, which is an excerpt from FLORENTINUS, *Institutiones*, lib. I; MOMMSEN has *nos* in place of *homines*. B, M, and S cite this law as *velut vim*; but see p. 274, n. 7, where B, M, and S cite the same law as *vim vi*. ⁶B has *videtur* in place of *unde* and omits *est*.

⁷M has *aversetur* and S has *homine . . . aversetur*. ⁸B has *hospitalibus*.

⁹M adds *ipsis haec et huiusmodi facere*. This seems to be an amplification of M's.

¹⁰B omits *barbari* and *sed* and has *cum divites* in place of *dummodo*.

¹¹M and S have *probatur*.

¹²The full title is *De rerum divisione et qualitate*.

¹³*Inst.*, 2, I, 12; KRUEGER has *ferae igitur bestiae*.

¹⁴B has *naturali*.

¹⁵B has *quia*.

¹⁶M omits *hic*.

¹⁷So M; a later editor (perhaps S) has amended it to *quae* with corresponding changes in *derivatur* and *habet* to *derivantur* and *habent*, on the supposition that the antecedent of the relative was *multa* and not *iure*. In place of *quod* B has *non quod sit ius gentium: tamen*.

diluvium, maior pars hominum constituerit, ut legati ubique essent in-violabiles, ut mare esset commune, ut bello capti essent servi, et hoc ita expediret, ut hospites non exigerentur, certe hoc haberet vim, etiam aliis repugnantibus.

IV Prop. 5. Quarta propositio: Immo si ex aliquo Hispano nascantur ibi liberi et velint esse cives, non videtur quod possint prohiberi vel a civitate vel a commodis aliorum civium—dico ex parentibus habentibus illic domicilium. Probatur, quia hoc videtur esse de iure gentium, ut civis dicatur et sit, qui natus est in civitate (*ff.*¹ De appellationibus,² l. *cives*³). Et confirmatur, quia, cum homo sit animal civile, talis natus in una civitate non est civis alterius civitatis. Si ergo non esset civis illius, non esset civis alicuius civitatis, per quod impediretur a iure naturali et gentium. Immo 392 si qui vellent⁴ accipere domicilium in aliqua civitate illorum, ut accipiendo uxorem vel alia ratione, qua alii peregrini solent fieri cives, non videtur quod possint prohiberi plus quam alii, et per consequens gaudere privilegiis civium sicut alii, modo etiam subeant onera aliorum. Etiam facit quod hospitalitas commendatur (I *Pet.*, 4⁵): “Hospitales invicem”; et (I *ad Tim.*, 3⁶) de episcopo, “Oportet episcopum hospitalem esse.” Vnde e contrario nolle accipere hospites et peregrinos est de se malum.

V Prop. 6. Quinta propositio: Si barbari velint prohibere Hispanos in supra dictis a iure gentium, puta vel commercio vel aliis, quae dicta sunt, Hispani primo debent ratione et suasionibus tollere scandalum et ostendere omni ratione se non venire ad nocendum illis, sed pacifice velle hospitari et peregrinari sine aliquo incommodo illorum, et non solum verbis, sed etiam ratione ostendere, iuxta illud, “Omnia sapientes prius⁷ experiri decet.”⁸ Quod si, reddita ratione, barbari nolint⁹ acquiescere, sed velint vi agere, Hispani possunt se defendere et omnia agere ad securitatem suam convenientia, quia vim vi repellere licet. Nec solum hoc, sed, si aliter tuti esse non possunt, artes¹⁰ et munitiones aedificare, et, si acceperint iniuriam, 393 illam auctoritate principis bello prosequi et alia belli iura agere. Probatur, quia causa belli iusti est ad propulsandam et vindicandam iniuriam, ut supra dictum est ex S. Thoma (*Secunda Secundae*, qu. 40¹¹). Sed barbari prohibentes a¹² iure gentium Hispanos faciunt eis iniuriam. Ergo, si necesse sit ad obtinendum ius suum bellum gerere, possunt hoc licite facere.

¹B, M, and S have *ff.*, but the title and law referred to are in *Code*. The error, therefore, seems to have been VICTORIA's and not that of his auditors or editors. The reference is to *Cod.*, 7, 62, 11.

²The full title is *De appellationibus et consultationibus*.

³*Cod.*, 7, 62, 11, which is an excerpt from EMPERORS DIOCLETIAN and MAXIMIAN.

⁴In place of *si qui vellent* B has *videtur quod qui vellet*.

⁵V. 9: “Hospitales invicem sine murmuratione.”

⁶V. 2: “Oportet ergo episcopum irreprehensibilem esse, . . . hospitem.”

⁷M inserted *verbis* here, probably intending to improve. M may have been misled by *verbis* two lines before. S follows M.

⁸TERENCE, *Eunuchus*, 4, 7, 19: “Omnia prius experiri, quam armis, sapientem decet.”

⁹B, M, and S have *nolunt*, but I do not think even wide usage would countenance the difference that would exist between *nolunt* and *velint*, when used in precisely the same connection.

¹⁰S has *arces*, but see CHARLES DUFRESNE DU CANGE, *Glossarium ad scriptores mediae et infimae latinitatis* (Paris, 1733), tom. I, p. 733, s. v. *ars*, I.

¹¹B has *q. quarta*. The reference is to art. 1, which is quoted on p. 249.

¹²B omits *a*.

Sed est notandum quod, cum barbari isti sint natura meticulosi et alias stolidi et stulti, quantumcumque Hispani velint eos demere a timore et reddere eos securos de pacifica conversatione, possunt adhuc merito timere, videntes homines cultu extraneos et armatos et multo potentiores se. Et ideo, si commoti hoc timore concurrunt ad exigendos vel occidendos Hispanos, liceret quidem Hispanis se defendere,¹ servato modamine inculpatæ tutelæ, nec alia belli iura liceret exercere in illos, puta vel, parta victoria et securitate, occidere illos vel spoliare vel occupare civitates eorum, quia in illo casu sunt innocentes et merito timent, ut supponimus. Et ideo debent Hispani se tueri, sed, quantum fieri poterit, cum minimo detrimento illorum, quia est bellum dumtaxat defensivum.

Notandum.

394 Nec est inconveniens quod,² cum ex una parte est ius et ex altera ignorantia invincibilis, quod sit bellum iustum ex utraque parte. Vt, sicut Galli tenent Burgundiam cum probabili ignorantia, credentes pertinere ad eos, Imperator autem noster habet ius certum ad illam provinciam, qui³ potest bello repetere, et illi illam defendere, sic potest contingere cum barbaris, et hoc multum est considerandum. Alia enim sunt iura belli adversus homines vere noxios et iniuriosos⁴ et alia adversus innocentes et ignorantes, sicut⁵ etiam aliter vitandum est scandalum Pharisæorum, aliter pusillorum et infirmorum.

Bellum nonnunquam ex utraque parte iustum.

7. Sexta propositio: Si, omnibus tentatis, Hispani non possunt consequi securitatem cum barbaris, nisi occupando civitates et subiciendo illos, licite possunt hoc etiam facere. Probatur, quia finis belli est pax et securitas, ut dicit Augustinus ad Bonifacium.⁶ Postquam autem⁷ (ut dictum est) licet Hispanis bellum suscipere, vel etiam, si necesse sit, inferre, ergo licet omnia facere necessaria ad finem belli, scilicet ad obtinendam securitatem et pacem.

VI Prop.

Prob.

395 9. Septima conclusio: Immo si, postquam Hispani omni diligentia et re et verbo ostendissent non stare per eos quin barbari pacifice et sine damno suarum rerum agant, nihilominus barbari perseverarent in malitia sua et contenderent ad perditionem Hispanorum, iam tunc non tanquam cum innocentibus, sed tanquam cum perfidis hostibus agere possent, et omnia belli iura in illos prosequi et spoliare illos et in captivitatem redigere et dominos priores deponere et novos constituere, moderate tamen pro qualitate rei et iniuriarum. Haec conclusio satis patet, quia si licet eis bellum indicare, ergo etiam iura belli persequi. Et confirmatur, quia non debent esse melioris condicionis, quia sunt infideles. Sed haec omnia licerent adversus Christianos, si semel esset iustum bellum. Ergo etiam licent adversus illos. Item hoc est generale ius gentium, ut omnia capta in bello fiant victoris, ut habetur in l. *si quid bello*⁸ et l. *hostes*,⁹ ff., De captivis,¹⁰ et can. *ius gentium*,¹¹ Dist. 1, et expressius *Inst.*, De rerum divisione,

VII Prop.

Prob. 1.

Prob. 2.

¹B and M insert *et*.²M omits *quod*.³M omits *qui*.⁴M and S have *iniurios*.⁵B has *Sic*.⁶The reference is to *Epist.* 189 (alias 205), § 6.⁷B omits *autem*.⁸*Dig.*, 49, 15, 28, which is an excerpt from LABEO, *Pithana a Paulo epitomata*, lib. 4. B, M, and S cite this law as *si quid in bello*.⁹*Dig.*, 49, 15, 24, which is an excerpt from ULPIAN, *Institutiones*, lib. 1.¹⁰The full title is *De captivis et de postliminio et redemptis ab hostibus*.¹¹*Decr.*, 1, 1, 9, which is an excerpt from ST. ISIDORE of Seville, *Etymologiae*, lib. 5, cap. 6.

- § *item ea quae ex hostibus*,¹ ubi dicitur quod "iure gentium, quae ab hostibus accepimus, statim nostra fiunt, adeo ut etiam homines in nostram servitutem deducantur." Item, quia (ut doctores dicunt in materia de bello) princeps, qui habet iustum bellum, sit ipso iure iudex hostium et potest eos iuridice punire et condemnare pro qualitate iniuriarum. Et confirmantur omnia supra dicta, quia legati iure gentium sunt inviolabiles 396 et Hispani sunt legati Christianorum. Ergo barbari tenentur eos audire saltem benigniter² et non repellere. Iste ergo est primus titulus, quo Hispani potuerunt occupare provincias et principatum barbarorum, modo fiat sine dolo et fraude et non quaerant fictas causas belli. Si enim barbari permetterent Hispanos pacifice negotiari apud illos, nullam possent Hispani ex hac parte praetendere iustam causam occupandi bona illorum non plus quam Christianorum.
9. Alius titulus potest esse, scilicet causa religionis Christianae propagandae, pro quo sit prima conclusio: Christiani habent ius praedicandi et annuntiandi Evangelium in provinciis barbarorum. Haec conclusio nota est ex illo: "Praedicate Evangelium omni creaturae,"³ etc.; item, "Verbum Domini non est alligatum" (II ad Tim., 2⁴). Secundo, patet ex praedictis, quia, si habent ius peregrinandi et negotiandi apud illos, ergo possunt docere veritatem volentes⁵ audire, maxime de spectantibus ad salutem et felicitatem multo magis quam de spectantibus ad⁶ aliquam humanam disciplinam. Tertio, quia alias illi essent extra statum⁷ salutis, si non liceret Christianis ire ad eos ad annuntiandum Evangelium. Quarto, quia correctio fraterna est de iure naturali, sicut et dilectio. Cum ergo 397 omnes illi sint non solum in peccatis, sed extra statum⁷ salutis, ergo⁸ ad Christianos spectat corrigere et dirigere eos, immo videtur⁹ quod teneantur ad hoc. Quinto et ultimo, quia sunt proximi, ut supra dictum est: "sed unicuique mandavit Deus de proximo suo" (Eccli., 17¹⁰). Ergo spectat ad Christianos instruere¹¹ illos ignorantes de summis¹² rebus.
10. Secunda conclusio: Licet hoc sit commune et liceat omnibus, tamen Papa potuit hoc negotium mandare Hispanis et interdicere omnibus aliis. Probatur, quia, licet (ut supra dictum est) Papa non sit dominus temporalis, tamen habet potestatem in temporalibus in ordine ad spiritualia. Ergo, cum spectet ad Papam specialiter curare promotionem Evangelii in totum orbem, si ad praedicationem Evangelii in illis provinciis commodius possent principes Hispani dare operam, potest eis committere et interdicere omnibus aliis, et non solum interdicere praedicationem, sed etiam commercium, si hoc ita expediret ad religionis Christianae propagationem, quia potest ordinare temporalia, sicut expedit spiritualibus. Si ergo hoc ita expedit, ergo⁸ spectat ad auctoritatem et

¹Inst., 2, 1, 17. KRUEGER gives title as above; B has *item qui ab hostibus*; M has *item quae ab hostibus*; and S has *item quia ab hostibus*. ²S has *benigne*.

³Marc., cap. 16, v. 15; S supplies *Marc. ult after etc.*

⁵B has *virtutem volenti*.

⁶B omits *de spectantibus ad*.

⁷M has *statutum*.

⁸For repetition of this word, see p. 204.

⁹B has *videtur*.

¹⁰V. 12: "Et mandavit illis unicuique de proximo suo."

¹¹M has *instituere*.

¹²M has *divinis*.

398 potestatem summi Pontificis. Sed omnino videtur ita expedire eo, quod, si indiscriminatim ex aliis provinciis Christianorum concurrerent ad illas provincias, possent se invicem facile impedire¹ et excitare seditiones; unde et tranquillitas impediretur et turbaretur negotium fidei et conversio barbarorum. Praeterea, cum principes Hispani suis auspiciis et sumptibus primi omnium eam navigationem susceperint et tam feliciter Novum Orbem invenerint, iustum est ut ea peregrinatio aliis interdicatur, et ipsi solum fruantur inventis. Sicut etiam pro pace conservanda inter principes et religione amplificanda potuit Papa provincias Saracenorum inter principes Christianos ita distribuere, ne alius in alterius partes transeat, sic etiam posset pro commodo religionis principes creare et maxime ubi antea nulli fuissent principes Christiani. Prob. a.

II. Tertia conclusio: Si barbari permittant Hispanos libere et sine impedimento praedicare Evangelium, sive illi recipiant fidem sive non, non licet hac ratione intentare illis bellum nec alias occupare terras illorum. Haec probata est superius,² ubi confutavimus quartum titulum, et per se 399 patet, quia nunquam est bellum iustum, ubi nulla praecessit iniuria, ut dicit S Thomas³ (*Secunda Secundae*, qu. 40, art. 1⁴). III Prop.

12. Quarta conclusio: Si barbari, sive ipsi domini sive etiam multitudo, impediant Hispanos quominus libere annuntient Evangelium, Hispani, reddita prius ratione ad tollendum scandalum, possunt, illis invitis, praedicare et dare operam ad conversionem gentis illius et, si sit opus, propter hoc bellum suscipere vel inferre, quousque pariant⁵ opportunitatem et securitatem praedicandi Evangelium. Et idem est iudicium, si etiam permittentes praedicationem impediant conversionem, occidentes vel aliter punientes conversos ad Christum vel minis aut terroribus⁶ alios deterrentes. Haec patet, quia faciunt in hoc barbari iniuriam Hispanis, ut patet ex dictis, habent⁷ enim⁸ iustam⁹ belli causam. Secundo etiam, quia impediretur¹⁰ commodum ipsorum barbarorum, quod principes¹¹ eorum non possunt impedire iuste. Ergo in favorem illorum, qui opprimuntur et patiuntur iniuriam, possunt Hispani movere bellum, maxime cum res sit tanti momenti. Ex qua etiam conclusione¹² patet quod etiam hac ratione, si aliter negotium religionis procurari non potest, licet Hispanis occupare terras et provincias illorum et novos dominos creare et antiquos deponere 400 et prosequi iure belli, quae in aliis bellis iustis licite fieri possent, servato semper modo et ratione, ne ultra procedatur quam opus sit, et ut¹³ potius de proprio iure remittatur quam aliud, quod¹⁴ licet, invadendo, et semper omnia dirigendo¹⁵ magis ad commodum barbarorum quam ad proprium quaestum. IV Prop.

¹B has *expedire*, probably having in mind the *expedire* two lines above.

²S adds *in proxime antecedenti sectione*.

⁴For exact words, see p. 249.

⁶In place of *aut terroribus* M has *aliter*.

⁸M has *ergo* in place of *enim*.

¹¹M has *deincipes*, which is corrected in M's Errata to *principes*.

¹³B and S omit *ut*.

³B and S omit *ut dicit S. Thomas*.

⁵M has *parent*.

⁷B has *patet*.

⁹B inserts *esse*.

¹⁰B has *impeditur*.

¹²B has *quaestione*.

¹⁵M and S have *diligendo*.

¹⁴M inserts *non*.

Notandum.

Sed considerandum valde est quod Paulus dicit (I ad Cor., 6¹): "Omnia mihi licent, sed non omnia expediunt." Haec enim omnia, quae dicta sunt, intelleguntur per se loquendo. Fieri enim potest ut per haec bella, caedes et spolia potius impediretur conversio barbarorum quam quaereretur et propagaretur. Et ideo hoc in primis cavendum est, ne offendiculum ponatur Evangelio; si enim ponatur, cessandum esset ab hac ratione evangelizandi et alia quaerenda esset. Sed nos ostendimus quod per se haec² licent. Ego non dubito quin opus fuerit vi et armis, ut possent Hispani illic perseverare, sed timeo ne ultra res progressa sit quam ius fasque permittebant. Iste ergo potuit esse secundus titulus legitimus, quo barbari potuerunt cadere in dicionem Hispanorum. Sed semper habendum est prae oculis quod statim dictum est, ne hoc, quod per se licitum est, reddatur malum per accidens, quia bonum est ex integra causa, malum autem per circumstantiam,³ ex Aristoteli (tertio *Ethicorum*) et 401 Dionysio (*De divinis nominibus*, cap. 4).

Tertius
titulus
legitimus.

13. Alius titulus potuit esse, qui derivatur ex isto, et est: Si qui ex barbaris conversi sunt ad Christum et principes eorum vi aut metu volunt eos revocare ad idololatriam, Hispani hac ratione etiam⁴ possunt, si alias fieri non potest, movere bellum et cogere barbaros ut desistant ab illa iniuria et contra pertinaces iura belli persequi,⁵ et per consequens aliquando dominos deponere, sicut in aliis bellis iustis. Et iste potest poni tertius titulus et non solum titulus religionis, sed amicitiae et societatis humanae. Ex hoc enim, quod aliqui barbari sint conversi ad religionem Christianam, sunt facti amici et socii Christianorum, et debemus operari "bonum ad omnes, maxime autem ad domesticos fidei" (*ad Gal.*, 6⁶).

Prob.

Quartus
titulus
legitimus.

14. Alius titulus potest esse: Si bona pars barbarorum conversi essent ad Christum, sive iure sive iniuria, i. e., dato quod minis aut terribus vel alias non servatis servandis, dummodo vere essent Christiani, Papa ex rationabili causa posset, vel ipsis petentibus vel etiam non petentibus, dare illis principem Christianum et auferre alios dominos infideles.

Prob.

Confirm. I.

Probatur, quia, si ita expediret ad conservationem religionis Christianae, 402 quia timetur ne sub dominis infidelibus apostatae fiant, i. e., deficient a fide, vel illa occasione graventur a suis dominis, in favorem fidei Papa potest mutare dominos. Et confirmatur, quia, ut doctores dicunt et expresse S. Thomas (*Secunda Secundae*, qu. 10, art. 10⁷), Ecclesia posset omnes servos Christianos, qui serviunt infidelibus, liberare,⁸ etiamsi alias essent legitime⁹ captivi. Et hoc expresse dicit Innocentius in dicto cap. *quod super his*,¹⁰ De voto.¹¹ Ergo magis poterit liberare alios subditos

¹V. 12.²B omits *haec*.³S has *ex singulis defectibus*.⁴B adds *si necesse sit*.⁵B and M have *prosequi*; S has *iure* for *iura*. See p. 265, n. 11. Cf. also *bello persequi*, p. 245 (three times); *iura bello persequi*, p. 261; and similar expressions on pp. 276 and 279.⁶V. 10.⁷"Potest tamen iuste per sententiam vel ordinationem Ecclesiae auctoritatem Dei habentis tale ius domini vel praelationis tolli, quia infideles merito suae infidelitatis merentur potestatem amittere super fideles, qui transferuntur in filios Dei."⁸B adds *eos*.⁹M has *legitimi*.¹⁰*Decret.*, 3, 34, 8, which is an excerpt from POPE INNOCENT III, *Epist. ad Cantuariensem Archiepiscopum*. B, M and S cite this law as *super his*.¹¹The full title is *De voto et voti redemptione*.

Christianos, qui non sunt tam astricti, sicut servi. Et confirmatur, quia tantum vel plus tenetur uxor viro, sicut¹ subditus domino, cum illud vinculum sit iuris divini, hoc autem non. Sed in favorem fidei liberatur uxor fidelis a viro infideli, si maritus ei molestus est pro religione, ut patet ex Apostolo (I ad Cor., 7²) et ex cap. quanto,³ De divortiis. Immo ita nunc consuetum est, ut ipso facto, quod alter coniugum convertitur ad fidem, sit liber ab alio⁴ coniugum infideli. Ergo etiam Ecclesia in favorem fidei et ad vitandum periculum potest liberare omnes Christianos ab oboedientia et subiectione dominorum infidelium, secluso scandalo. Et ponitur iste quartus titulus legitimus.

Confirm. II.

- 403 15. Alius titulus posset⁵ esse propter tyrannidem vel ipsorum dominorum apud barbaros vel etiam propter leges tyrannicas in iniuriam innocentium, puta quia sacrificant homines innocentes vel alias occidunt indemnatos ad vescendum carnibus eorum. Dico etiam quod sine auctoritate Pontificis possunt Hispani prohibere barbaros ab omni nefaria consuetudine et ritu, quia possunt defendere innocentes a morte iniusta. Hoc probatur, quia "unicuique mandavit Deus de proximo suo,"⁶ et illi omnes sunt proximi. Ergo quilibet potest defendere illos a tali tyrannide et oppressione, et hoc maxime spectat ad principes. Item probatur Prov. 24,⁷ "Erue eos, qui ducuntur ad mortem, et qui trahuntur ad interitum, liberare ne cesses."⁸ Nec hoc solum intellegitur cum actu ducuntur ad mortem, sed etiam possunt⁹ cogere barbaros ut cessent a tali ritu. Et, si nolunt, hac ratione possunt eis bellum inferre¹⁰ et iura belli in eos persequi,¹¹ et si aliter tolli non potest sacrilegus ritus, possunt mutare dominos et novum principatum inducere. Et quantum ad hoc habet verum illa opinio Innocentii et Archiepiscopi, ¹²quod pro peccatis contra naturam possunt puniri.¹³ Nec obstat quod omnes barbari consentiant in huiusmodi leges et sacrificia, nec volunt se hoc¹⁴ vindicari ab Hispanis; in his enim non ita sunt sui iuris, ut possint se ipsos vel filios suos tradere ad mortem. Et iste posset esse quintus titulus legitimus.

Quintus titulus legitimus.

Prob. 1.

Prob. 2.

16. Alius titulus posset esse per veram et voluntariam electionem, puta si barbari ipsi intellegentes et¹⁵ prudentem administrationem et humanitatem Hispanorum ultro vellent accipere in principem Regem

Sextus titulus legitimus.

¹S has *quantum*.²Vv. 13-15.³Decri., 4, 19, 7, which is an excerpt from POPE INNOCENT III, *Epist. ad Ferrariensem Episcopum*. B and M have *Ec.* in place of *et ex cap.*⁴S has *altero*.⁵B has *potest*.⁶Eccli., cap. 17, v. 12.⁷V. 11.⁸B has *neceste est*, which may have been a case of homoiophoneton on the part of VICTORIA's auditors.⁹S has *possint*.¹⁰B has *potest . . . inferri*.¹¹S has *iure belli eos persequi*.¹²B inserts *supposito*.¹³B adds *intelligendum, inquam, quando sunt in detrimentum innocentum, ut ex hoc quod facere prohibentur, scilicet sacrificare innocentes et in esum convertere*. It is not probable that M would have left out such a considerable portion, had it appeared in all of the manuscripts available to him. This, I take it, is an explanatory repetition, not intended as a part of the formal *relectio*, but taken down as such by one of the auditors. See p. 198.¹⁴M has *super hoc* and S has *in hoc*. This seems to be an instance of M's improvements. See p. 197.¹⁵M omits *et*.

Prob.

Hispaniae, tam domini quam alii. Hoc enim fieri posset et¹ esset legitimus titulus etiam de lege naturali; quaelibet enim Respublica potest sibi constituere dominum, nec ad hoc esset necessarius consensus omnium, sed videtur sufficere consensus maioris partis. Quia, sicut² alias disputavi³ in his, quae spectant ad bonum Reipublicae, illa, quae constituuntur a maiori parte, tenent, etiam aliis contradicentibus, alias nihil posset geri pro utilitate Reipublicae, cum difficile sit, ut omnes conveniant in unam sententiam. Vnde, si in aliqua civitate aut provincia maior pars esset Christianorum et illi in favorem fidei et pro bono communi vellent habere principem Christianum, credo quod possent eligere, aliis invitis, etiam relinquendo alios dominos infideles, et dico quod possent eligere principem, non solum sibi, sed toti Reipublicae, sicut et Galli pro bono suae Reipu- 405 blicae mutaverunt principes et, ablato regno a Childerico, tradiderunt Pipino, Caroli Magni patri, quam mutationem Zacharias Pontifex comprobavit. Et hic potest poni sextus titulus.

Septimus
titulus
legitimus.

17. Alius titulus posset esse⁴ causa sociorum et amicorum. Cum enim ipsi barbari inter se gerant aliquando legitima bella, et pars, quae iniuriam passa est, habet ius bellum inferendi,⁵ potest accersere Hispanos in auxilium et praemia victoriae illis communicare, ut feruntur fecisse Talcalthedani⁶ contra Mexicanos, qui cum Hispanis composuerunt, ut eos iuvarent ad debellandos Mexicanos, haberent autem quicquid iure belli ad eos spectare poterat. Quod enim haec sit causa iusta belli pro sociis et amicis, non est dubium, ut etiam declarat Caietanus (*Secunda Secundae*, qu. 40, art. 1⁷), quia aequè potest Respublica advocare extraneos ad vindicandum inimicos contra extraneos malefactores. Et confirmatur, quia profecto hac maxime ratione Romani dilataverunt imperium suum, dum scilicet sociis atque amicis auxilia praestabant et ea occasione iusta bella suscipientes⁸ iure belli in possessionem novarum provinciarum veniebant. Et tamen Imperium Romanum approbatur tanquam legitimum a beato Augustino (lib. 3,⁹ *De civitate Dei*) et a S. Thoma (*Opusculo* 21¹⁰). Et 406 Sylvester Constantinum Magnum pro Imperatore habuit, et Ambrosius Theodosium. Non videtur autem quo alio iuridico titulo venerint Romani in possessionem orbis nisi iure belli, cuius maximae occasiones fuerunt defensio et vindictio sociorum. Sicut et Abraham ad vindicandum Regem Salem¹¹ et alios reges, qui cum eo foedus percusserant, dimicavit contra quattuor reges illius regionis (*Gen.*, 14), a quibus ipse nullam iniuriam accepit. Et iste videtur septimus et ultimus titulus, quo po-

Prob.

Confirm.

¹B has *ut* in place of *et*.²B has *sic*.³M has *disputavimus*.⁴B omits *posset esse* and S has *esse potest*.⁵B has *et libet contrariae bellum inferre*; M has *habēt* for *habet*; and S transposes *bellum inferendi*.⁶The Tlaxcaltecs or Tlascalans. See PRESCOTT, *History of the Conquest of Mexico*, passim.⁷Vol. VIII, page 314, of the edition used: "In eodem articulo, circa iustitiam causae belli, adverte quod, quia amici ac socii unum censentur, ideo iusta causa indicendi bellum est pro ultione sociorum. Nec minus potest socios et extraneos ad bellum gerendum princeps invitare quam ad exercendam iustitiam intus ministros extraneos conducere."⁸M has *suscipientes*.⁹S has *lib. 5*.¹⁰Alias *Opusculum* 17, *De regimine Iudaeorum* (alias *subditorum*) ad Ducissam Brabantiae, wherein among other things St. THOMAS says: "Eorum (i. e., Iudaeorum) res terrarum domini possint accipere tamquam suas." But cf. *De regimine principum*, lib. 3, cap. 13.¹¹I. e., Melchisedech.

tuerunt aut possent venire barbari eorumque provinciae in possessionem et dominium Hispanorum.

18. Alius titulus posset non quidem adseri, sed revocari in disputationem et videri aliquibus legitimus, de quo ego nihil affirmare audeo,¹ sed nec omnino condemnare, et est talis: Barbari enim isti, licet (ut supra dictum est) non omnino sint amentes, tamen etiam² parum distant ab amentibus;³ ita videtur quod non sint idonei ad constituendam vel administrandam legitimam Rempublicam etiam inter⁴ terminos humanos et civiles. Vnde nec habent leges convenientes neque magistratus, immo
 407 nec sunt satis idonei ad gubernandam⁵ rem familiarem. Vnde etiam carent et litteris et artibus, non solum liberalibus, sed etiam mechanicis, et agricultura diligenti et opificibus et multis aliis rebus commodis, immo necessariis ad usus humanos. Posset ergo quis dicere quod pro utilitate eorum possent principes Hispani accipere adminstrationem illorum et constituere illis per oppida praefectos et gubernatores, immo⁶ etiam illis dare⁷ novos dominos, dummodo constaret hoc illis expedire. Hoc, inquam, posset suaderi, quia, si omnes essent⁸ amentes, non dubium est quin hoc esset non solum licitum, sed convenientissimum, immo tenerentur ad hoc principes, sicut si omnino essent infantes. Sed videtur quantum ad hoc eadem ratio de illis et de amentibus, quia nihil aut paulo plus valent ad gubernandum se ipsos quam amentes, immo quam ipsae ferae⁹ et bestiae, nec mitiori cibo quam ferae, nec paene meliori utuntur. Ergo eodem modo possent tradi ad gubernationem sapientiorum. Et confirmatur hoc apparenter. Nam, si fortuna aliqua omnes adulti perirent apud illos et¹⁰ manerent pueri et adulescentes, habentes quidem aliqualem usum rationis, sed intra annos pueritiae et pubertatis, videtur profecto
 408 quod possent principes recipere curam illorum et gubernare illos, quamdiu essent in tali statu. Quod, si hoc admittitur, videtur certe non negandum quin idem fieri posset circa parentes¹¹ barbaros, supposita hebetudine, quam de illis referunt qui apud eos fuerunt, quae multo, inquirunt,¹² maior est quam apud alias nationes sit in pueris et adulescentibus.¹³ Et certe hoc posset fundari in praecepto caritatis, cum illi sint proximi nostri et teneamur bona illorum curare. Et hoc (ut dixi) sit sine assertione propositum, et etiam cum illa limitatione, ut fieret¹⁴ propter bona et utilitatem eorum, et non tantum ad quaestum¹⁵ Hispanorum.¹⁶ In hoc enim est totum periculum animarum et salutis, et ad hoc posset etiam prodesse illud, quod supra dictum est, quod aliqui sunt natura servi; nam tales videntur omnes isti barbari, et sic possent ex parte gubernari ut servi.¹⁷

Octavus
titulus
dubius.

Ratio veri-
similis.

Confirm.

¹M omits *audeo* here and has *ipsum audeo* after *condemnare*.

³M inserts *et*.

⁴M has *intra*.

⁶B adds *qui semper manet ista causa constituere*.

⁷B omits *dare*.

⁸So S; B and M have *erant*.

⁹B has *ipse ferreae*, M has *ipse ferae*, and S has *ipsae fere*.

¹⁰S omits *et*.

¹¹B omits *parentes*.

¹³M has *in pueris et amentibus*, while S has simply *in pueris*.

¹⁵From *cum* to *quaestum* is marked as a quotation in S.

¹⁶B adds *barbaris in omnibus vel nihil melius vel peius habentibus quam prius habebant*.

¹⁷From *sic* to *servi* is marked as a quotation in S.

²M omits *etiam*.

⁵B has *gubernandum*.

¹²B omits *inquirunt*.

¹⁴B has *fiant*.

- Obiectio. Sed ex tota disputatione videtur sequi quod, si cessarent omnes isti tituli, ita quod¹ barbari nullam rationem iusti belli darent nec vellent habere Hispanos principes, etc., quod² cessaret tota illa peregrinatio et commercium cum magna iactura Hispanorum et etiam proventus principum magnum detrimentum acciperent, quod non esset ferendum.
- Respons. 1. Respondetur primo: Commercium non oporteret ut cessaret, quia, ut 409 iam declaratum est, multa sunt apud barbaros, quibus ipsi abundant et per commutationem possent Hispani advehere. Item multa etiam sunt,³ quae ipsi pro desertis habent vel sunt communia omnibus volentibus occupare, et Lusitani magnum commercium habent cum similibus gentibus,
- Respons. 2. quas non subiecerunt, et cum magno commodo. Secundo, fortasse regii redditus non minores essent. Nam aequae iuste posset imponi vectigal super aurum et argentum, quod a barbaris reportaretur, vel ad quintam partem, vel etiam ad maiorem, pro rei qualitate, et merito, cum navigatio fuerit a principe inventa et sua auctoritate essent tuti negotiatores. Tertio patet quod iam, postquam ibi facta est conversio multorum barbarorum, nec expediret nec liceret principi omnino dimittere administrationem illarum provinciarum.

¹S has *ut*. For explanation of consecutive use of *quod*, see p. 205.

²See p. 204.

³B and S omit *sunt*.

410 REVERENDI PATRIS, FRATRIS FRANCISCI DE VICTORIA,
DE INDIS, SIVE DE IVRE BELLI
HISPANORVM IN BARBAROS,
RELECTIO POSTERIOR.

SVMMA.¹

1. Christianis licet militare et bella gerere.
2. Bellum gerendi aut indicendi penes quem sit auctoritas.
3. Bellum defensivum quilibet posset suscipere et gerere, etiam privatus.
4. Invasus a latrone aut inimico an possit repercutere invasorem, si possit fugiendo evadere.
5. Respublica quaelibet habet auctoritatem indicendi et inferendi bellum.
6. Princeps eandem auctoritatem habet ad indicendum et inferendum bellum quam Respublica.
7. Respublica quid sit et quis proprie dicatur principes.
8. Respublicae aut principes plures, si habeant unum communem dominum aut principem, an possint per se inferre bellum sine auctoritate superioris principis.
- 411 9. Reguli sive principes, qui non praesunt Reipublicae perfectae, sed sunt partes alterius Reipublicae, non possunt bellum inferre aut gerere. Et quid dicendum de civitatibus.
10. Belli iusti quae possit esse ratio et causa. Et quod iusti belli causa non sit diversitas religionis, probatur.
11. Imperii amplificatio non est iusta causa belli.
12. Principis gloria propria aut aliud commodum non est belli iusta causa.
13. Iniuria accepta est unica et sola causa iusta ad inferendum bellum.
14. Iniuria quaelibet et quantavis non sufficit ad bellum inferendum.
15. Bello iusto existente, licet omnia facere, quae ad defensionem boni publici sunt necessaria.
16. Bello iusto licet recuperare omnes res perditas et illarum partem.
17. Bello iusto licet occupare ex bonis hostium impensam belli et omnia damna ab hostibus iniuste illata.
18. Princeps iusti belli, recuperatis rebus ab hostibus, quid ulterius possit facere.
- 412 19. Principi iusti belli licet, parta victoria, recuperatis rebus ac pace etiam et securitate habita, vindicare iniuriam ab hostibus acceptam et animadvertere in hostes et punire illos pro iniuriis illatis.
20. Bellum ut dicatur iustum, non semper est satis principem credere se habere iustam causam.
21. Belli iustitia summopere et magna cum diligentia examinanda est.
22. Subditi an teneantur examinare causam belli; et quomodo, si subdito constet de iniustitia belli, non liceat ei militare, etiamsi princeps imperet.
23. Subditi si habeant conscientiam de iniustitia belli, non licet illis² sequi bellum, sive errent sive non.

¹See p. 217, n. 3.

²S omits *illis*, but some such word is necessary and *illis* is the word used by B and M.

24. Senatores, reguli et universaliter omnes, qui admittuntur, vel vocati vel etiam ultro venientes, ad consilium publicum vel regis, tenentur iniusti belli causam examinare.
25. Belli causas examinare qui non teneantur, sed possint, fide adhibita maioribus, licite militare.
26. Subditos militantes quando non excusaret ignorantia de iniustitia belli.
27. Belli iustitia si sit dubia, quid faciendum; et quomodo, si princeps unus sit in legitima possessione, manente dubio, non possit alius bello et armis 413 repetere.
28. Si sit civitas aut provincia, de qua dubitatur an habeat legitimum possessorem, maxime si est deserta morte legitimi domini, etc.—quid in tali casu sit agendum.
29. Dubitans de iure suo, etiamsi pacifice possideat, quomodo examinare teneatur diligenter causam, si forte possit certum scire vel pro se vel pro alio.
30. Examinata causa, quamdiu rationabiliter perseverat dubium, legitimus possessor non tenetur cedere possessioni, sed potest licite retinere.
31. Subditis non solum licet in bello defensivo in re dubia sequi principem suum in bellum, sed etiam in bello offensivo.
32. Bellum an possit ex utraque parte esse iustum, et quomodo, seclusa ignorantia, hoc non possit contingere.
33. Princeps sive subditus, qui ex ignorantia secutus est bellum iniustum, si postea constiterit ei de iniustitia belli, an teneatur restituere.
34. Innocentes interficere in bello an liceat.
35. Innocentes interficere nunquam per se et ex intentione licet.
36. Interficere an liceat infantes et feminas in bello contra Turcas, et quid dicen- 414 dum de agricolis apud Christianos, togatis, peregrinis, hospitibus et clericis.
37. Interficere innocentes per accidens, etiam scienter, aliquando licet et aliquando non.
38. Innocentes, a quibus in futurum imminet periculum, an liceat interficere.
39. Spoliare an liceat innocentes inter hostes, et quibus rebus sint spoliandi.
40. Bellum si satis commode geri potest non spoliando agricolas aut alios innocentes, videtur non licere eos spoliare; et quid dicendum de peregrinis et hospitibus, qui sunt apud hostes.
41. Hostes si nolint restituere res iniuria ablatas et non possit qui laesus est aliunde recuperare, quomodo possit undecumque satisfactionem capere, sive a nocentibus sive ab innocentibus.
42. Innocentes et pueros, esto quod non sint interficiendi, an saltem liceat ducere in captivitatem et servitutem.
43. Obsides, qui vel tempore induciarum vel peracto bello ab hostibus recipiuntur, utrum interfici possint, si hostes fidem frangerent et conventis non starent.
44. Interficere an liceat omnes in bello nocentes. 415
45. Interficere licet indifferenter omnes, qui in actuali conflictu proelii vel in oppugnatione aut defensione civitatis contra pugnant, et quamdiu res est in periculo.
46. Interficere licet nocentes, parta victoria et rebus iam extra periculum positis.
47. Interficere non semper licet omnes nocentes, solum ad vindicandum iniuriam.
48. Interficere aliquando et licet et expedit omnes nocentes, et hoc maxime in bello contra infideles. Et quid in bello contra Christianos?
49. Captivos aut deditos an liceat interficere, supposito quod etiam fuerunt nocentes.
50. Capta in bello iusto utrum fiant capientium et occupantium, et quomodo capta in iusto bello, usque ad sufficientem satisfactionem rerum ablatarum per iniuriam et etiam impensarum, fiant occupantium.

51. Mobilia omnia quomodo iure gentium fiant occupantis, etiamsi excedant compensationem damnorum.
- 416 52. An liceat civitatem permittere militibus in praedam, et quomodo non sit illicitum, sed et quandoque necessarium.
53. Militibus non licet praedas agere aut incendia facere sine auctoritate, alias tenerentur ad restitutionem.
54. Occupare licet et tenere agrum, arces, et oppida hostium, quantum necessarium fuerit ad damnorum illorum compensationem.
55. Occupare licet ab hostibus et tenere arcem aliquam aut civitatem pro paranda securitate et vitando periculo aut pro defensione, ut tollatur ab hostibus occasio nocendi, etc.
56. Hostes multare parte agri licet ratione iniuriae illatae et nomine poenae, h. e., ad vindictam; et quomodo hac etiam ratione potest arx aut oppidum cum moderamine occupari.
57. Tributa an liceat victis hostibus imponere.
58. Principes hostium, an liceat deponere et novos ponere et constituere vel sibi principatum restituere; et quomodo non passim et ex quacumque causa belli iusti hoc liceat facere.
59. Principes hostium quando legitime possent deponi, ostenditur.
60. Canones seu regulae belligerandi describuntur.

417 Quia possessio et occupatio provinciarum illorum¹ barbarorum, quos Indos vocant, videtur² tandem maxime iure belli posse defendi, ideo, postquam in priori³ relectione de titulis disputavi, quos Hispani possunt praetendere ad illas provincias,⁴ sive iustis sive iniustis, visum est de iure belli brevem disputationem habere, ut illa relectio absolutior videatur.⁵ Sed, quia temporis angustia pressi non poterimus hic tractare omnia, quae in hac materia tractari possent et disputari,⁶ non licuit extendere calamum pro amplitudine et dignitate argumenti et materiae, sed quantum brevitatis temporis patiebatur. Itaque solum notabo propositiones praecipuas⁷ in hac materia cum probationibus brevissimis, abstinens me⁸ a multis dubiis, quae in hac disputatione⁹ conferri possent. Tractabo autem quattuor

Quattuor
quaestiones
principales
tractandae.

¹B and M have *illarum*.

²M has *videtur*.

³B omits *priori* and S has *in relectione priori*.

⁴S adds *obtinentas* after *provincias*; cf., however, *ad iustam possessionem illarum provinciarum* (p. 238), where *ad* governs a noun directly in the acc. after *praetendere*. Cf. also p. 278.

⁵The obvious meaning of this passage is: "I am giving this second *relectio*, in order that the first may seem more final and complete." The readings of B, M, and S differ. M (*ut relectio superior absolutior videatur*) gives the proper sense, but it is so different from B (*ut illae relectiones absolutiores videantur*), which preceded it, that it makes one suspect its genuineness. This same suspicion must have been felt by I (who is followed by S: *ut haec relectiones absolutiores videantur*). The emendation proposed above gives the proper sense and a satisfactory explanation of the existing readings. The reading of B might be either a deliberate change of BOYER to procure what he thought would make better sense or an incorrect extension of what he thought were abbreviated words. It may be that BOYER was guilty of the former; the latter could have happened in the following manner. In manuscripts in which diphthongs are ligatured it is easy to mistake *illa* for *illae*. Once this mistake were made, it would be easy to think *relectio* and *absolutior* were abbreviations, and the mistaking of third person singular forms for third person plural forms and vice versa, due to the use of the macron or tilde to denote the omission of *n*, is too frequent an occurrence to need further comment (e. g., M has *essent* for *esset*, p. 292, n. 13; *interficiatur* for *interficiantur*, p. 293, n. 5; B has *pugnat* for *pugnant*, p. 288, n. 8).

⁶B has *Sed quia haec disputatio etiam simul cum secunda relectione in scholis proponi oportuit*, which seems to be either an emendation of BOYER or a repetition of the author not intended as a part of his formal lecture. See p. 198. S omits *tractari* and *et*.

⁷B has *principales*.

⁸S omits *me*, but cf. p. 278, n. 2; p. 281, n. 1; and p. 287, n. 3.

⁹B has *in hac disputatione*, which remains uncorrected in M, since it is a mistake very easy to escape one's notice (cf. *hac disputatione*).

quaestiones principales.¹ Prima: An omnino Christianis sit licitum bella gerere. Secunda: Apud quem sit auctoritas aut gerendi aut indicendi bellum. Tertia: Quae possint et debeant esse causae iusti belli. Quarta: Quid in bello iusto et quantum liceat in hostes.

Prima
quaestio
principalis.

Ratio pro
parte altera
quaestionis.

Quantum ad primam,² posset videri quod omnino bella sint interdicta Christianis, prohibitum enim videtur eis se defendere, iuxta illud: "Non 418 vos defendentes, carissimi, sed date locum irae" (*ad Rom.*, 12³); et Dominus in Evangelio: "Si quis te percusserit in dexteram maxillam tuam,⁴ praebe illi et alteram," et "Ego dico vobis non resistere malo" (*Matth.*, 5⁵); et (*Matth.*, 26⁶) "Omnes qui acceperint gladium gladio peribunt." Neque satis videtur respondere quod omnia haec non sunt in praecepto, sed in consilio; satis enim magnum inconueniens esset, si bella omnia, quae a Christianis suscipiuntur, sunt contra consilium Domini. In contrarium est sententia omnium⁷ doctorum et usus receptus in Ecclesia.

Lutheri
sententia.

A qua non
videtur Ter-
tullianus ab-
horre.

Pro quaestionis explicatione notandum⁸ quod, licet inter catholicos satis conveniat de hac re, Lutherus tamen, qui nihil incontaminatum reliquit, negat Christianis etiam adversus Turcas licere arma sumere, innixus tum locis Scripturae supra positus, tum etiam⁹ quod, si Turcae¹⁰ invadant Christianitatem, illa est voluntas Dei, cui resistere non licet. In qua tamen re non ita potuit imponere Germanis hominibus ad arma natis, sicut in aliis suis dogmatibus. Et Tertullianus non adeo videtur abhorre ab hac sententia, qui libro *De corona militis*¹¹ disputat "an in totum Christianis militia conveniat," et tandem profecto in hanc senten- 419 tiam declinare videtur,¹² ut Christiano militare interdictum putet. "Cui," inquit, "ne¹³ litigare quidem liceat."¹⁴

Respondet
auctor uni-
ca conclu-
sione.

I. Sed, relictis extraneis opinionibus, sit responsio ad quaestionem unica conclusione: Licet Christianis militare et bella gerere. Haec con-

¹M omits *principales*.

²B, M, and S have *primum*, which, it seems, should be rejected in favor of *primam*, in spite of its being the more difficult reading, because the author is speaking about the first *quaestio*, which he has just mentioned and which he is now answering. Furthermore, in speaking of the other three *quaestiones* later on he uses *secunda*, *tertia*, and *quarta*, although it is true that with them he uses the word *quaestio* also. An *a* in the manuscripts could be very easily mistaken for a *u*, and the mistake would be difficult to detect, since it makes some sort of sense.

³V. 19; VULGATE has *vosmetipsos*. ⁴M omits *tuam*.

⁵V. 39: "Ego autem dico vobis, non resistere malo; sed si quis te percusserit in dexteram maxillam tuam, praebe illi et alteram." Cf. also *Luc.*, cap. 6, v. 29.

⁶V. 52: "Tunc ait illi: 'Converte gladium tuum in locum suum; omnes enim qui acceperint gladium gladio peribunt.'"

⁷B omits *omnium*.

⁸B has *nota*, which might have been an abbreviation for *notandum*. S adds *est* for the sake of grammatical completeness. The reading of M, however, which is given above, seems to be the correct one. Cf. the use of *notandum* on pp. 276, 277, and 280.

⁹B has *autem*.

¹⁰M inserts *ait*.

¹¹Cap. II: "Puto prius conquirendum an in totum Christianis militia conveniat."

¹²B has in *ea opinione videtur perseverare*, which may be accounted for as a repetition of the author or as a difference due to the *relectio* having been delivered twice (see p. 198).

¹³M has *nec*, following TERTULLIAN. But VICTORIA is not quoting the exact words of TERTULLIAN: "cui nec litigare conveniet."

¹⁴M has *licet*, using the indicative mood, perhaps because TERTULLIAN does, though a different tense from the one TERTULLIAN used.

clusio est Augustini in multis locis. Nam¹ *Contra Faustum*² et *Libro 83 Quaestionum*³ et *De verbis Domini*⁴ et *Libro contra Secundinum Manichaeum*⁵ et in sermone de puero Centurionis⁶ et ad Bonifacium epistola⁷ diserte⁸ astruit. Et probatur conclusio, ut probat Augustinus ex verbis Ioannis Baptistae (*Luc.*, 3⁹) ad milites, "Neminem concutiatis, nemini iniuriam feceritis." "Quod si Christiana disciplina," inquit Augustinus,¹⁰ "omnino bella culparet, hoc potius consilium salutis petentibus in Evangelio daretur, ut abicerent arma seque militiae omnino subtraherent. Dictum est autem eis, 'Neminem concutiatis, contenti estote stipendiis vestris.'" Prob. 1.

Secundo, probatur ratione (scilicet,¹¹ *Secunda Secundae*, qu. 40, art. 1¹²). Licet stringere gladium et armis uti adversus interiores malefactores et seditiosos cives, secundum illud *ad Rom.*, 13¹³: "Non sine causa gladium

¹B omits *Nam*.

²S adds in margin *Praesertim lib. 22*. The reference is to *Contra Faustum Manichaeum*, lib. xxii, capp. 74-75, which are found in the *CORPUS IURIS CANONICI* as *Decr.*, 2, 23, 1, 4. See below, p. 285.

³S adds in margin *qu. 31*. The reference is to *De diversis quaestionibus* LXXXIII, qu. 31, § 1: "Vindicatio [est], per quam vis aut iniuria, et omnino omne quod obfuturum est, defendendo aut ulciscendo propulsatur."

⁴S adds in margin *Serm. 19*. The reference is to found be in *Sermo 82* (Appendix 1, edition of the Benedictines, who do not think it belongs to St. AUGUSTINE) and as *Decr.*, 2, 23, 1, 5, in the *CORPUS IURIS CANONICI*: "Non enim militare, delictum est; sed propter praedam militare, peccatum est."

⁵B and M have *et secundo libro contra Manichae. et*, while S has omitted these words entirely. I searched long in all of St. AUGUSTINE's writings against the Manichaeans for the sentiment referred to, but it was in the *second* book of none of them. Finally, the correct solution of the puzzle was found, as given above. The mistake in B and M may be accounted for as follows. Very probably most of the references to authorities were abbreviated in the manuscripts. The editor of B finding, we may say, *et lib. cont. secund. Manichae. et* in the manuscripts and thinking it a mistake (*cont.* and *secund.* transposed) transposed *secund.* to the position in which we find it and extended the abbreviation to *secundo*. The editor of M, facing the same state of affairs, followed B, while the editor of S, who had not access to the manuscripts, omitted the words apparently as being impossible.

⁶S adds in margin *Est sermonibus De verbis Domini*. The reference is to *Epist.* 138 (ad Marcellinum), § 15: "Nam si Christiana disciplina omnia bella culparet, hoc potius militibus consilium salutis petentibus in Evangelio diceretur, ut abicerent arma, seque omnino militiae subtraherent. Dictum est autem eis: 'Neminem concusseritis, nulli calumniam feceritis, sufficiat vobis stipendium vestrum' (*Luc.*, iii, 14)." This is found in substantially the same words in the *CORPUS IURIS CANONICI* as *Decr.*, 23, 1, 2, after the words in *sermone de puero centurionis*: "Nam si Christiana disciplina omnia bella culparet, hoc potius consilium salutis petentibus, in evangelio diceretur, ut abicerent arma, seque militiae omnino subtraherent. Dictum est autem eis: 'Neminem concusseritis; estote contenti stipendiis vestris.'" Prob. 2.

⁷M has in *epistola ad Bonifacium*. S adds in margin *Videtur Ep. 205, ad Bonifacium Comitem*. The reference is to *Epist.* 189 (alias 205), § 4, and is found in the *CORPUS IURIS CANONICI* as *Decr.*, 2, 23, 1, 3: "Noli existimare neminem Deo placere posse, qui in armis bellicis militat."

⁸M inserts *eam*.

⁹*Luc.*, cap. 3, v. 14: "Et ait illis: 'Neminem concutiatis, neque calumniam faciatis, et contenti estote stipendiis vestris.'" Prob. 3.

¹⁰S adds in margin *Videtur esse locus lib. 22, Contra Faustum, cap. 74*, but the reference is to *Epist.* 138. See above, note 6, from which it appears that VICTORIA was quoting from the *CORPUS IURIS CANONICI*, rather than from a text of St. AUGUSTINE.

¹¹M has *S. Thom.* in place of *scilicet*.

¹²"Cum autem cura rei publicae commissa sit principibus, ad eos pertinet rem publicam civitatis vel regni seu provinciae sive subditae tueri. Et sicut licite defendunt eam materiali gladio contra interiores perturbatores, dum malefactores puniunt, secundum illud Apostoli *ad Rom.*, 13: 'Non sine causa gladium portat. Minister enim Dei est, vindex in iram ei, qui male agit,' ita etiam gladio bellico ad eos pertinet, rem publicam tueri ab exterioribus hostibus. Unde et principibus dicitur in *Psal.* 81: 'Eripite pauperem et egenum de manu peccatoris liberate.'" Prob. 4.

¹³V. 4: "Si autem malum feceris, time; non enim sine causa gladium portat. Dei enim minister est, vindex in iram ei, qui male agit."

portat. Minister enim Dei est, vindex in iram ei, qui male agit." Ergo etiam licet uti gladio et armis adversus hostes exteriores. Vnde principibus dictum est in *Psal.*,¹ "Eripite pauperem et egenum de manu peccatoris liberate."

Prob. 3.

Tertio, in lege naturae hoc licuit, ut patet de Abraham, qui pugnavit contra quattuor reges (*Gen.*, 14). Item in lege scripta, ut patet de David et Machabaeis. Sed² lex Evangelica nihil³ interdicat, quod iure naturali licitum sit, ut S. Thomas eleganter tradit (*Prima Secundae*, qu. 107, art. ult.); unde et dicitur lex libertatis (*Iac.*, 1⁴ et 2⁶). Ergo quod licebat in lege naturae⁶ et scripta, non minus licet in lege Evangelica.

Prob. 4.

Et sequentes
pertinent ad
bellum offen-
sivum.

Videtur locus
hic sumptus
ex Quaestio-
nibus
super Iosue,
qu. 10.
Prob. 5.

Et quia de bello defensivo revocari in dubium non potest, quia vim vi repellere licet (*ff.*, De iustitia et iure, l. *ut vim*⁷), quarto probatur etiam de bello offensivo, i. e., in quo non solum defenduntur aut etiam repetuntur res, sed ubi petitur vindicta pro iniuria accepta. Probatur, inquam,⁸ auctoritate Augustini (*Libro 83 Quaestionum*⁹) et habetur can. *Dominus*,¹⁰ 23, qu. 2: "Iusta bella solent diffinire, quae ulciscuntur iniurias, si gens vel civitas plectenda est, quae vel vindicare neglexit quod a suis improbe factum est vel reddere quod per iniuriam ablatum est."

Probatur etiam quinto¹¹ de bello offensivo, quia bellum etiam defensivum geri commode non potest, nisi etiam vindicetur in hostes, qui iniuriam fecerunt aut conati sunt facere; fierent enim hostes audaciores ad iterum invadendum, nisi timore poenae deterreantur¹² ab iniuria. 421

Prob. 6.

Locis ante
citatis.

Probatur sexto,¹³ quia finis belli est pax et securitas Reipublicae, ut Augustinus inquit (*De verbis Domini*¹⁴ et *ad Bonifacium*¹⁵). Sed non potest esse securitas in Republica, nisi hostes coërceantur metu belli ab iniuria. Esset enim omnino iniqua condicio belli, si, hostibus invadentibus iniuste Rempublicam, solum liceret Reipublicae avertere hostes nec possent ulterius prosequi.

¹S has *Psal.* 18. The reference is to *Psal.* 81, v. 4.

²B has *Et*.

³B has *nihili*, which seems to involve a dittography.

⁴V. 25: "Qui autem perspexerit in legem perfectam libertatis et permanserit in ea, . . . hic beatus in facto suo erit."

⁵V. 12: "Sic loquimini, et sic facite, sicut per legem libertatis incipientes iudicari."

⁶S has *naturali*, which seems to be a change made simply for grammatical symmetry (cf. *scripta*).

⁷*Dig.*, I, 1, 3, which is an excerpt from FLORENTINUS, *Institutiones*, lib. I. M cites this law as *vim vi* here, but see p. 259, n. 5. ⁸B adds *quarto*.

⁹This is a mistake (cf. p. 279); the reference is to *Quaestiones in Heptateuchum*, lib. VI (*Quaestiones in Iesum Nave*, not *Iosue*, as S has in margin), qu. 10: "Iusta autem bella definiri solent, quae ulciscuntur iniurias, si qua gens vel civitas, quae bello petenda est, vel vindicare neglexerit quod a suis improbe factum est, vel reddere quod per iniurias ablatum est." See next note.

¹⁰*Decr.*, 2, 23, 2, 2, which is the passage from St. AUGUSTINE just quoted.

¹¹B omits *quinto*.

¹²S has *detererentur*, which would be more classical.

¹³B has *etiam* in place of *sexto*.

¹⁴In place of *verbis* B and M have *verb.*, which the manuscripts probably had. But S, extending the abbreviation, erred by using the singular form (*verbo*) instead of the plural. For the reference, see p. 273, n. 4.

¹⁵The reference is to *Epist.* 189 (alias 205), § 6: "Non enim pax quaeritur ut bellum excitetur, sed bellum geritur ut pax acquiratur."

Probatur septimo¹ ex fine et bono totius orbis. Prorsus enim orbis Prob. 7.
consistere in felici statu non posset, immo esset rerum omnium pessima
condicio, si tyranni quidem et latrones et raptores possent impune iniurias
facere et opprimere bonos et innocentes, nec liceret vicissim innocentibus
animadvertere in nocentes.

Probatur octavo et ultimo, quia in moralibus potissimum argumentum Prob. 8.
est ab auctoritate et exemplis² sanctorum et bonorum virorum,³ qui non
solum bello defensivo tutati sunt patriam resque suas, sed etiam bello
offensivo persecuti sunt iniurias ab hostibus acceptas vel attentatas, ut
patet de Ionatha et Simone (I *Machab.*, 9⁴), qui vindicaverunt mortem
Ioannis fratris sui contra filios Iambri. Et in Ecclesia Christiana patet
422 de Constantino Magno,⁵ Theodosio maiore, et aliis clarissimis et Chri-
stianissimis Imperatoribus, qui multa bella utriusque generis gesserunt, cum
haberent in consiliis sanctissimos et doctissimos episcopos.

2. Secunda quaestio: Apud quem sit auctoritas gerendi aut indicendi⁶ Secunda
bellum. quaestio
principalis.

3. Pro qua sit prima propositio: Bellum defensivum quilibet potest I Prop.
suscipere et gerere, etiam privatus. Haec patet; nam vim vi repellere
licet (*ff.*,⁷ ubi supra⁸). Vnde hoc bellum quilibet potest gerere sine auc-
toritate cuiuscumque alterius, non solum pro defensione personae, sed
etiam rerum et bonorum.

4. Sed circa istam conclusionem dubitatur primo, an invasus a latrone Dubium.
aut inimico possit repercutere invasorem, si possit fugiendo evadere. Et Archiepisco-
pi sententia.
Archiepiscopus⁹ quidem respondet quod non, quia iam non est defensio
cum moderamine inculpatae tutelae; quilibet enim tenetur se defendere,
quantum poterit, cum minimo detrimento invasoris. Si ergo resistendo
oportet aut occidere aut graviter vulnerare invasorem, potest autem se
liberare fugiendo, videtur quod teneatur. Sed Panormitanus¹⁰ (cap. *olim*,¹¹ Panormitani
De restitutione spoliatorum) distinguit: si enim invasus magnum dedecus sententia.
subiret fugiendo, non tenetur fugere, sed potest repercutiendo iniuriam
423 repellere; si vero non faceret iacturam famae aut honoris, ut monachus aut
rusticus invasus a nobili et forti viro, tenetur potius fugere. Bartolus
Bartoli sen-
tentia.

¹B has etiam.

²B has exemplis. Probatur exemplis, etc.

⁴Vv. 35-41.

⁵B omits Magno.

⁶B has incendendi.

⁷Dig., I, I, 3, which is an excerpt from FLORENTINUS, *Institutiones*, lib. I.

⁸P. 274, n. 7.

⁹ST. ANTONINUS, *Summa*, II, 7, 8, § 1 (p. 859 bc).

¹⁰§ 17: "Item quaeritur ad declarationem praedictorum, quid si possum evadere fugiendo? Qui-
dam in dicta lege I distinguunt quod aut est talis homo, quem non decet fugere, ita quod fuga esset sibi
maxima verecundia, et tunc non tenetur fugere, sed potest percutere ad iniuriam repellendam; aut
non est sibi verecundia, ut puta, quia aggrediens est praestantior persona, et tunc secus. Bartolus
ibi tenet indistincte quod non tenetur quis fugere, quia fuga est iniuria (l. *apud Labeonem*, ff., De
iniuriis). Ergo licitum est percutere ad hanc iniuriam propulsandam. Item videmus quod pro
defensione rerum licitum est armis resistere (ut hic et in cap. *dilecto*, De sententia excommunicationis,
Lib. vi) et etiam occidere secundum ius civile, si aliter res salvae esse non possunt, iuxta ea, quae
leguntur et notantur in l. *furum*, ff., De sicariis. Sed quaelibet iniuria corporalis est maior iactura
rerum (l. *in servorum*, ff., De poenis) quod tamen est temperandum, ut notat Bartolus in l. 1, ff., eodem
titulo. Ergo pro hac iniuria propulsanda licitum est percutere, nec tenetur fugere."

¹¹*Decri.*, 2, 13, 12.

Sequitur
auctor Bartoli
sententiam.

autem in l. 1,¹ ff., De poenis, et in l. *furem*,² ff., De sicariis,³ indistincte tenet quod licet se defendere nec tenetur fugere, quia fuga est iniuria (l. *item apud Labeonem*,⁴ ff., De iniuriis⁵). Si autem pro rerum defensione licitum est armis resistere, ut⁶ in dicto cap. *olim*,⁷ et in cap. *dilecto*,⁸ De sententia excommunicationis,⁹ Lib. VI, multo magis pro arcenda iniuria corporali, quae maior est quam rerum iactura (l. *in servorum*,¹⁰ ff., De poenis). Et haec opinio potest probabiliter et satis tuto teneri, maxime cum iura civilia hoc concedant, ut in dicta l. *furem*.¹¹ Auctoritate autem legis nemo peccat, quia leges dant ius in foro conscientiae. Vnde etiamsi iure naturali non liceret occidere pro defensione rerum, videtur quod iure civili factum sit licitum, et hoc re vera, secluso scandalo, videtur licere non solum laico, sed etiam clerico et¹² religioso viro.

II Prop.
Discrimen
inter priva-
tam personam
et Rempub-
licam.

Opinio auc-
toris.

5. Secunda propositio: Quaelibet Respublica habet auctoritatem indicendi et inferendi bellum. Pro probatione est notandum quod differentia est quantum ad hoc inter privatam personam et Rempublicam, quia privata persona habet quidem ius defendendi se et sua, ut dictum est, sed non habet ius vindicandi iniuriam, immo nec repetendi ex intervallo 424 temporis res ablatas. Sed defensio oportet ut fiat in praesenti periculo, quod iurisconsulti¹³ dicunt "in continenti"; unde, transacta necessitate defensionis, cessat licentia belli. Credo tamen quod per iniuriam percussus possit statim repercutere, etiamsi invasor non deberet ultra progredi. Sed ad vitandam ignominiam et dedecus posset, qui colaphum, e. g., accepit, gladio statim repercutere, non ad sumendam vindictam, sed (ut dictum est) ad vitandam infamiam et ignominiam. Sed Respublica habet auctoritatem non solum defensionis, sed etiam vindicandi se et suos et¹⁴ persequendi iniurias. Quod probatur, quia, ut Aristoteles tradit (tertio *Politicorum*¹⁵), Respublica debet esse sibi sufficiens. Sed non posset sufficienter conservare bonum publicum et statum Reipublicae, si non possit vindicare iniuriam et animadvertere in hostes; fierent enim, ut supra dictum est,¹⁶ mali promptiores et audaciores ad iniuriam inferendam, si possent impune hoc facere. Et ideo necessarium est ad commodam rerum mortalium administrationem, ut haec auctoritas concedatur Reipublicae.

¹Dig., 48, 19, 1.

²Dig., 48, 8, 9, whereon Bartolus says: "Et ex hoc consequitur aliud, quod si non possum effugere, quin me percutias, nisi ego te interficiam, possum te interficere per hanc legem cum li. Ratio est: cum enim quaelibet iniuria personalis sit maior quavis reali (l. *in servorum*, ff., De poenis) et propter iniuriam realem irrecuperabilem possum occidere, igitur multo magis pro personali, quod tene menti.

³The full title is *Ad legem Corneliam de sicariis et veneficiis*.

⁴Dig., 47, 10, 15.

⁵The full title is *De iniuriis et famosis libellis*.

⁶S adds *patet*.

⁷Decret., 2, 13, 12, which is an excerpt from POPE INNOCENT III, *Epist. ad Episcopum et capitulum Tridonensem*.

⁸Sext., 5, 11, 6, which is an excerpt from POPE INNOCENT IV, *In concilio Lugdunensi*.

⁹The full title is *De sententia excommunicationis, suspensionis et interdicti*.

¹⁰Dig., 48, 19, 10, which is an excerpt from MACER, *De publicis iudiciis*, lib. II.

¹¹Dig., 48, 8, 9, which is an excerpt from ULPIAN, *Ad edictum*, lib. 37.

¹²S omits *et*.

¹³B has *consulti* simply.

¹⁴S omits *et*.

¹⁵Cap. I: πᾶν δὲ τὸ τῶν τοιούτων πλεῖστον ἱκανὸν πρὸς αὐτάρκειαν ζωῆς, ὥς ἀπλῶς εἰπεῖν.

¹⁶S omits *est*.

425 6. Tertia propositio¹: Eandem auctoritatem habet quantum ad hoc princeps sicut² Respublica. Haec est sententia Augustini³ (*Contra Faustum*⁴). "Ordo," inquit, "naturalis mortalium⁵ paci accommodatus hoc poscit, ut suscipiendi belli auctoritas atque consilium penes principes sit." Et ratione probatur, quia princeps non est nisi ex electione Reipublicae. Ergo gerit vices et auctoritatem⁶ illius, immo iam, ubi sunt legitimi principes in Republica, tota auctoritas residet penes principes, neque sine illis aliquid publice aut bello aut pace geri potest.

Eadem auctoritas principis quae Reipublicae in hac re.

7. Sed tota difficultas est: Quid est Respublica et quis proprie dicitur princeps? Ad hoc breviter respondetur quod Respublica proprie vocatur perfecta communitas. Sed hoc ipsum est dubium, quae sit perfecta communitas. Pro quo notandum quod perfectum idem est quod totum; dicitur enim imperfectum, cui aliquid deest, et e contrario⁷ perfectum, cui nihil deest. Est ergo perfecta Respublica aut communitas, quae est per se totum, i. e., quae non est alterius Reipublicae pars, sed quae habet proprias leges, proprium consilium et proprios magistratus, quale est regnum Castellae et Aragoniae,⁸ principatus Venetorum, et alii similes. Nec enim obstat quin sint plures principatus et Respublicae perfectae sub
426 uno principe. Talis ergo Respublica aut princeps illius habet auctoritatem indicendi bellum, et solum⁹ talis.

8. Sed ex hoc ipso dubitari merito potest an, si plures huiusmodi Respublicae aut principes habeant unum communem dominum aut principem, an¹⁰ possint per se inferre bellum sine auctoritate superioris principis. Et respondeo quod sine dubio possunt ut reges, qui sunt subiecti Imperatori, possunt invicem belligerare, non exspectata auctoritate Imperatoris; quia (ut dictum est¹¹) Respublica debet sibi esse sufficiens, nec sufficeret sibi sine tali facultate.

Dubium.

Respons. auctoris.

9. Ex quibus sequitur et patet quod alii reguli sive principes, qui non praesunt Reipublicae perfectae, sed sunt partes alterius Reipublicae, non possunt bellum inferre aut gerere, quemadmodum dux Albanus aut comes Beneventanus,¹² sunt enim partes Regni Castellae et per consequens non habent perfectas Respublicas. Sed, cum haec sint magna ex parte aut iure gentium aut humano, consuetudo potest dare facultatem et auctoritatem belli gerendi. Vnde, si qua civitas aut alius princeps obtinuit antiqua consuetudine ius gerendi per se bellum, non est ei neganda haec auctoritas, etiamsi alias non videtur habere Rempubicam perfectam.¹³

Coroll.

¹B omits *Tertia propositio*.

²There is no doubt that the reading of S (*quam*) is more Ciceronian, but it does not seem to be required by the usage of the time.

³M adds *expresse*, S *lib. 22*.

⁴*Contra Faustum Manichaeum*, lib. 22, cap. 75 ("ordo tamen ille naturalis . . . penes Principem sit"), which is also found in the CORPUS IURIS CANONICI as *Decr.*, 2, 23, 1, 4 ("ordo autem ille naturalis . . . penes principes sit").

⁵M omits *mortalium*, which is not only in B, but is in the passage cited.

⁶B has *vices et auctoritates* and M has *vicem et auctoritatem*.

⁷B has *econtra*, S *contrarii*.

⁸M inserts *et* here.

⁹B has *sola*.

¹⁰For the repetition of *an*, see pp. 204-205.

¹¹See p. 276, n. 15.

¹²B and S have *Beneventaneus*.

¹³M has *non esset respublica perfecta*.

Item etiam necessitas hanc licentiam et auctoritatem concedere posset. 427
Si enim in eodem regno una civitas aliam oppugnaret, vel aliquis ex ducibus¹ alium ducem, et rex neglegeret aut non auderet vindicare iniurias illatas, posset civitas aut dux, qui passus est iniuriam, non solum se defendere, sed etiam bellum inferre et animadvertere in hostes et malefactores etiam occidere, quia alias neque defendere quidem commode se posset. Non enim hostes abstinerent se² ab iniuria, si illi, qui patiuntur iniuriam, contenti essent solum se defendere. Qua ratione etiam conceditur privato homini ut possit invadere inimicum, si aliter non patet ei via se defendendi ab iniuria. Et haec satis de ista quaestione.

Tertia
quaestio
principalis.
I Prop.

10. Tertia quaestio³: Quae possit esse ratio et causa iusti belli, quae quaestio magis⁴ necessaria est ad hanc causam et disputationem barbarorum. Pro qua sit prima propositio: Causa iusti belli non est diversitas religionis. Haec probata fuit prolixè in priori⁵ relectione, ubi impugnavi-
mus quartum titulum, qui praetendi potest ad possessionem barbarorum, quia scilicet nolunt recipere fidem Christianam. Et est sententia S. Thomae (*Secunda Secundae*, qu. 66, art. 8) et communis sententia doctorum—neque scio aliquem, qui contrarium sentiat.

II Prop.

11. Secunda propositio: Non est iusta causa belli amplificatio im- 428
perii. Haec notior est quam ut probatione indigeat, alias esset aequè iusta causa ex utraque parte belligerantium et sic essent omnes innocentes. Ex quo iterum sequeretur⁶ quod non liceret occidere illos; et implicat contradictionem, quod esset iustum bellum.⁷

III Prop.
Prob. 1.

12. Tertia propositio: Nec⁸ est iusta causa belli aut gloria propria aut aliud commodum principis. Haec etiam nota est. Nam princeps debet et bellum et pacem ordinare ad bonum commune Reipublicae nec publicos⁹ redditus pro propria gloria aut commodo erogare, et multo minus cives suos periculis exponere. Hoc enim interest inter regem legitimum et tyrannum, quod tyrannus ordinat regimen ad proprium quaestum et commodum, rex autem ad bonum publicum, ut tradit Aristoteles (quarto *Politicorum*, cap. 10¹⁰). Item habet auctoritatem a Republica. Ergo debet uti illa ad bonum Reipublicae. Item leges debent esse “nullo privato comodo, sed pro communi utilitate civium” conscriptae, ut habetur Dist. 4, can.¹¹ *erit autem lex*,¹² ex Isidoro. Ergo etiam leges belli debent esse pro communi utilitate et non propria principis.¹³ Item hoc differunt

Prob. 2.

Prob. 3.

¹B has *duabus*.

²S omits *se*, but see p. 271, n. 8; p. 281, n. 1; and p. 287, n. 3.

³M adds *est*.

⁴B has *quaaque magis*, S *quaeque magis*.

⁵B and S have *proxima*.

⁶M has *sequitur*.

⁷M adds *et quod non liceat occidere illos*, which has been adapted in S to *et non liceret occidere illos*. The reading of M might be either a repetition of a few words from the preceding line or an addition made to secure more completeness by giving the other term of the contradiction. The latter seems to be more probable, especially in view of the change made by M to make the tense of *sequeretur* conform to that of *implicat*.

⁸M has *non*.

⁹B has *proprios*.

¹⁰ἡ τις ἀνυπεύθυνος ἄρχει τῶν ὁμοίων καὶ βελτιόνων πάντων πρὸς τὸ σφέτερον αὐτῆς συμφέρον, ἀλλὰ μὴ πρὸς τὸ τῶν ἀρχομένων.

¹¹B omits *can.*; M and S have *cap*.

¹²*Decr.*, 1, 4, 2, which is an excerpt from St. ISIDORE of Seville, *Etymologiae*, lib. v, cap. 21.

¹³B omits *et non propria principis*.

429 liberi a servis, ut Aristoteles tradit (primo *Politicorum*, capp. 3 et 4), quod¹ domini utuntur servis ad propriam utilitatem, non servorum, liberi autem non sunt propter alios, sed propter se. Vnde quod principes abutuntur civibus cogendo eos militare et pecuniam in bellum conferre, non pro publico bono, sed pro privato suo commodo, est cives servos facere.

13. Quarta propositio: Vnica est et sola causa iusta inferendi bellum, iniuria accepta. Haec probatur primo auctoritate Augustini (*Libro 83 Quaestionum*,² "*Iusta bella solent diffiniri*," etc., ut supra³), et est determinatio⁴ S. Thomae (*Secunda Secundae*, qu. 40, art. 1⁵) et omnium doctorum. Item bellum offensivum est ad vindicandum iniuriam⁶ et animadvertendum in hostes, ut dictum est. Sed vindicta esse non potest, ubi non praecessit culpa et iniuria. Ergo. Item non⁷ maiorem auctoritatem habet princeps supra extraneos quam⁸ suos. Sed in suos non potest gladium stringere, nisi fecerint iniuriam. Ergo neque in extraneos. Et confirmatur ex eo, quod supra allatum est ex Paulo (*ad Rom.*, 13⁹) de principe, "Non sine causa gladium portat. Minister enim Dei est, vindex in iram ei, qui male agit." Ex quo constat quod adversus eos, qui nobis non nocent, non licet ira gladii¹⁰ uti, cum occidere innocentes prohibitum sit iure naturali. Omitto nunc si forte Deus specialiter aliud praeceperit¹¹; ipse enim est Dominus vitae et mortis et posset pro suo iure aliter disponere.

14. Quinta propositio: Non quaelibet et quantavis iniuria sufficit ad bellum inferendum. Haec probatur, quia nec etiam in populares et naturales licet pro quacumque culpa poenas atroces exsequi, ut mortem aut exilium aut confiscationem bonorum. Cum ergo quae in bello geruntur, omnia sint gravia et atrocia, ut caedes, incendia, vastationes, non licet pro levibus iniuriis bello persequi auctores iniuriarum, quia iuxta mensuram delicti debet esse plagarum modus (*Deut.*, 25¹²).

15. Quarta quaestio est de iure belli, quid¹³ scilicet et quantum liceat in bello iusto. De qua sit prima propositio: In bello licet omnia facere, quae necessaria sunt ad defensionem boni publici. Haec nota est, cum ille sit finis belli, Republicam defendere et conservare. Item hoc licet privato in defensione sui, ut probatum est. Ergo multo magis licet Republicae et principi.

¹B has *et* in place of *quod*.

²This is a mistake (cf. p. 274); the reference is to *Quaestiones in Heptateuchum*, lib. vi (*Quaestiones in Ierum Nave*, not *Iosue*, as S has in margin), qu. 10.

³Page 274; see also notes 9 and 10 on that page.

⁴B has *scilicet* in place of S.

⁵For the exact words, see p. 249.

⁶B omits *iniuriam*.

⁷B omits *non*, which is essential here.

⁸M repeats *supra* here.

⁹V. 4: "Si autem malum feceris, time; non enim sine causa gladium portat. Dei enim minister est, vindex in iram ei, qui male agit."

¹⁰M and S have *ita gladio*. An *r* might easily be mistaken for a *t*, especially when the mistake would make a Latin word. Once this has been done, the change from *gladii* to *gladio* would be easy, because *uti* requires an ablative. It is far more credible to suppose that M made these changes than to suppose that B did the reverse.

¹¹M and S have *praeciperet*. Both readings are admissible. The reading of M may be due to his ignorance of the admissibility of *praeceperit* in this connection.

¹²V. 2: "Pro mensura peccati erit et plagarum modus."

¹³B has *quod*.

IV Prop.

Prob. 1.
Potius Quaestio-
nibus
super Iosue,
qu. 10.

Prob. 2.

Prob. 3.

V Prop.

Quaestio
quarta
principalis.
I Prop.

- II Prop. 16. Secunda propositio: Licet recuperare omnes res perditas et illarum partem.¹ Haec etiam est notior quam ut indigeat probatione. Ad hoc enim vel infertur vel suscipitur bellum.
- III Prop. 17. Tertia propositio: Licet occupare ex bonis hostium impensam 431
 Prob. 1. belli et omnia damna ab hostibus iniuste illata. Haec patet, quia ad omnia illa tenentur hostes, qui fecerunt iniuriam. Ergo princeps² potest omnia illa repetere et bello exigere. Item, ut prius, quia, cum non patet
 Prob. 2. alia via, licet privato occupare omne debitum a debitore. Item, si quis
 Prob. 3. esset legitimus iudex utriusque partis gerentis bellum, deberet condemnare iniustos aggressores et auctores iniuriae, non solum ad restituendas res ablatas, sed etiam ad resarciendum impensam belli et omnia damna. Sed princeps, qui gerit iustum bellum, habet se in causa³ belli tanquam iudex, ut statim dicemus. Ergo etiam ille potest omnia illa ab hostibus exigere.
- IV Prop. 18. Quarta propositio: Nec⁴ solum haec licent, sed ulterius etiam progredi potest princeps iusti belli, quantum scilicet necesse est ad parien-
 dam⁵ pacem et securitatem ab hostibus, puta diruere arcem hostium et in hostico etiam munitionem erigere, si hoc necesse sit ad vitandum periculum
 Prob. 1. ab hostibus. Probatur, quia, ut supra dictum est, finis belli est pax et securitas. Ergo gerenti bellum iustum licent omnia, quae necessaria sunt
 Prob. 2. ad consequendam pacem et securitatem. Item tranquillitas et pax com- 432
 putantur inter bona humana, unde nec summa etiam bona faciunt statum felicem sine securitate. Ergo, si hostes eripiunt et turbant tranquillitatem
 Prob. 3. Reipublicae, licet vindicare ab illis per media convenientia. Item contra hostes intraneos, h. e., contra malos cives, licet haec omnia facere. Ergo etiam contra hostes extraneos. Antecedens patet; si quis enim in Repub-
 lica fecit iniuriam civi, magistratus non solum cogit auctorem iniuriae satisfacere laeso, sed etiam, si timetur ab illo, cogitur dare fideiussores aut
 Coroll. recedere a civitate, ita ut vitetur periculum ab illo. Ex quibus patet quod, parta victoria et recuperatis rebus, licet ab hostibus exigere obsides, naves, arma, et alia, quae sine fraude et dolo⁶ necessaria sunt ad retinendum hostes in officio et vitandum ab illis periculum.
- V Prop. 19. Quinta propositio: Nec tantum hoc licet, sed etiam, parta victo-
 ria,⁷ recuperatis rebus, et pace etiam et securitate habita, licet vindicare iniuriam ab hostibus acceptam et animadvertere in hostes et punire illos pro iniuriis illatis. Pro cuius probatione notandum quod principes non solum habent auctoritatem in suos, sed etiam in extraneos, ad coërcendum

¹M has *precium*; S has *praecium* and in the margin *alias partem*. But B, M and S have *partem* in the summary of propositions which precedes the text and B has *partem* here as well.

²B adds *belli*.

³B has *casu*.

⁴M has *Non*.

⁵M and S have *parandam*, which is by far the easier reading. But the reading of B ought to be retained, first, because it is the more difficult reading, and secondly, because the same collocation occurs on p. 292 (*ad pariendam pacem*), where B has *pariendam*, M has *parendum* (corrected to *parandum* in the list of Errata prefixed to M), and S has *parandam*. It is not likely that B would have made an odd mistake twice, whereas it is clear that M occasionally made improvements in the language of the manuscripts (see p. 197.). S has no value here because its editor never saw the manuscripts.

⁶B omits *et dolo*.

⁷M adds *et*.

433 illos, ut abstineant se¹ ab iniuriis, et hoc iure gentium et orbis totius auctoritate. Immo videtur quod iure naturali, quia aliter orbis stare non posset, nisi esset penes² aliquos vis et auctoritas deterrendi improbos et coërcendi ne bonis et³ innocentibus noceant. Ea autem, quae necessaria sunt ad gubernationem et conservationem orbis, sunt de iure naturali, nec alia ratione probari potest quod Respublica iure naturali habet⁴ auctoritatem afficiendi supplicio et poenis cives suos, qui Reipublicae sunt perniciosi. Quod si Respublica hoc potest in suos, haud dubium quin orbis possit in quoscumque perniciosos et nequam⁵ homines, et hoc non nisi per principes. Ergo pro certo principes possunt punire hostes, qui iniuriam fecerunt Reipublicae, et omnino postquam bellum rite et iuste susceptum est, hostes obnoxii sunt principi tanquam iudici proprio. Et confirmatur haec, quia re vera nec pax nec tranquillitas, quae est finis belli, aliter haberi potest, nisi hostes malis et damnis afficiantur, quibus deterreantur ne iterum aliquid tale committant. Quae omnia etiam probantur et confirmantur auctoritate et exemplis bonorum. Vt enim supra citatum est, Machabaei gesserunt bella non solum ad recipiendas res amissas, sed ad 434 vindicandum iniurias. Quod idem fecerunt Christianissimi principes et religiosissimi⁶ Imperatores. Et praeterea non tollitur ignominia et dedecus Reipublicae profugatis⁷ tantum hostibus, sed etiam severitate poenae afflitis et castigatis. Princeps autem non solum res alias, sed honorem et auctoritatem Reipublicae defendere tenetur et conservare.⁸

Principes quemadmodum non solum in suos, sed etiam in externos auctoritatem habeant iure gentium, atque adeo iure naturae, ex auctoris sententia.

20. Ex omnibus supra dictis oriuntur⁹ multa dubia. Et primum quidem dubium circa iustitiam belli, utrum ad bellum iustum sufficiat quod princeps credat se habere iustam causam. Ad hoc sit prima propositio: Non semper hoc satis est. Probatur primo, quia in aliis minoribus causis non sufficit nec principi nec privatis quod credant se iuste agere, ut notum est; possunt enim errare vincibiliter¹⁰ et affectate. Et ad actum bonum non sufficit sententia cuiusque, sed oportet ut fiat secundum iudicium sapientis, ut patet secundo *Ethicorum*.¹¹ Item alias sequeretur quod plurima¹² essent bella iusta ex utraque parte. Communiter enim non¹³ contingit quod principes gerant bellum mala fide, sed credentes se iustam causam sequi. Et sic omnes bellantes essent innocentes, et per consequens non liceret¹⁴ interficere in bello. Item alias etiam Turcae et Saraceni

Dubium I ex supra dictis ortum.

I Prop.

¹S omits *se*, but see p. 271, n. 8; p. 278, n. 2; and p. 287, n. 3.

²M has *poenes*.

³B omits *bonis et*. ⁴M has *habeat*.

⁵M, either through a misunderstanding or through a dittography, has *nequaquam*; S miscorrects further and has *nequam in*. ⁶B has *religiosissimi*.

⁷M and S have *profligatis*, which is altogether out of place. The argument is: "Ignominy is removed not only by the flight of the enemy, but also by severe chastisement and punishment of them."

⁸B has *defendere habet*.

⁹B has *supersunt*.

¹⁰B has *inciviliter*.

¹¹Cap. 6. M has the peculiar spelling *Etich*.

¹²M has *plurimum*.

¹³B omits *non* and has no negative in this sentence, where one is evidently required. M puts the negative before *contingit* (which is allowable) and in this must have followed the manuscripts, for if there had been no negative in the manuscripts, M would have placed the negative before *mala fide*, where it logically belongs, since all that precedes *mala fide* belongs also to what follows *sed*. Here the more difficult reading of M and S is to be retained.

¹⁴B omits *non*; M has *liceret non*, and S follows B, but has in the margin *alias non liceret*. A negative is required, but it is not allowable where M has it. M may have indicated the omission on the margin of the copy sent to the printer and the printer may have inserted the word in the wrong place.

gererent iusta bella adversus Christianos; putant enim se obsequium 435
praestare Deo.

- II Prop. 21. Secunda propositio: Oportet ad bellum iustum magna diligentia
Terentius. si velint ex aequo et bono disceptare. "Omnia enim sapienti," ut ait
Sallustius. comicus,¹ "verbis prius experiri oportet, quam armis." Et oportet consulere probos et sapientes viros et qui cum libertate et sine ira aut odio et cupiditate loquantur. "Haud enim facile verum cernitur," ut ait Crispus,² "ubi illa officiunt." Haec manifesta est. Nam cum in rebus moralibus difficile sit verum et iustum attingere, si neglegenter ista tractentur,³ facile errabitur, nec talis error excusabit auctores, maxime in re tanta et ubi agitur de periculo et calamitate multorum, qui tandem sunt proximi et quos diligere tenemur sicut nos ipsos.⁴
- Dubium II. 22. Secundum dubium: An subditi teneantur examinare causam belli vel an possint militare, nulla diligentia circa hoc adhibita, quemadmodum lictores⁵ exsequi possunt decretum praetoris sine alia examinatione. I Prop. De hoc dubio sit prima propositio: Si subdito constat de iniustitia belli, non licet militare, etiam ad imperium principis. Haec patet, quia non licet interficere innocentem quacumque auctoritate. Sed hostes sunt 436 innocentes in eo casu. Ergo non licet interficere illos. Item princeps peccat inferendo bellum in eo casu. Sed "non solum qui male agunt, sed⁶ qui consentiunt facientibus, digni sunt morte" (*ad Rom.*, 1⁷). Ergo milites etiam mala⁸ fide pugnantes non excusantur. Item non licet interficere cives innocentes mandato principis. Ergo nec extraneos.
- Coroll. 23. Ex quo sequitur corollarium quod, etiamsi subditi habeant conscientiam de iniustitia belli, non licet sequi bellum, sive errent sive non. Patet, quia "omne quod non est ex fide, peccatum est" (*ad Rom.*, 14⁹).
- II Prop. 24. Secunda propositio: Senatores et reguli et universaliter, qui admittuntur, vel vocati vel etiam ultro venientes, ad consilium publicum vel principis, debent et tenentur examinare causam iniusti¹⁰ belli. Patet, quia quicumque potest impedire periculum et damna proximorum, tenetur, maxime ubi agitur de periculo mortis et maiorum malorum, quale est in bello. Sed tales possunt, consilio suo et auctoritate causas belli examinantes, avertere bellum, si forte iniustum est. Ergo tenentur. Item si neglegentia istorum bellum iniustum gereretur, isti videntur consentire; imputatur enim alicui quod potest et debet impedire, si non impedit. 437 Item quia solus rex non sufficit ad examinandas causas belli; et verisimile¹¹

¹TERENCE, *Eunuchus*, IV, 7, 19: "Omnia prius experiri, quam armis, sapientem decet."

²SALLUST, *De Catilinae coniuratione*, cap. 51.

³S has tractarentur.

⁴Cf. *Math.*, cap. 22, v. 39.

⁵B has victores.

⁶S has *et* after *sed*, whereas if any word were added in the manuscripts, it should be *etiam*, both because the sense demands it and because it appears in the VULGATE in the passage quoted.

⁷V. 32: "Qui cum iustitiam Dei cognovissent, non intellexerunt, quoniam qui talia agunt digni sunt morte; et non solum qui ea faciunt, sed etiam qui consentiunt facientibus."

⁸S has *nulla*.

⁹V. 23; VULGATE has *autem* after *omne*.

¹⁰M has *iusti*.

¹¹M has *verisimile*.

est quod potest errare, immo quod errabit magno cum malo et pernicie multorum. Ergo non ex sola sententia regis, immo nec ex sententia paucorum, sed multorum et sapientum et¹ proborum debet geri bellum.

25. Tertia propositio: Alii minores, qui non admittuntur nec audiuntur apud principem aut in consilio publico, non tenentur examinare causas belli, sed possunt credentes maioribus licite militare. Probatur primo, quia nec fieri potest nec expediret reddere rationem negotiorum publicorum omnibus de plebe. Item quia homines inferioris ordinis, etiamsi intellexerent iniustitiam belli, prohibere non possent et sententia eorum non audiretur. Ergo frustra examinarent causas belli. Item quia eiusmodi hominibus, nisi contrarium constiterit, sufficiens argumentum debet esse pro iustitia belli quod publico consilio et auctoritate geratur. Ergo non est opus illis ulteriori examinatione. III Prop.

26. Quarta propositio: Nihilominus possent esse talia argumenta et indicia de iniustitia belli quod ignorantia non excusaret etiam huiusmodi subditos militantes. Patet, quia posset esse talis ignorantia affectata et pravo studio adversus hostes concepta. Item alias infideles excusarentur, sequentes principes suos in bello contra Christianos, et non liceret illos interficere, quia certum est quod credunt se habere iustam causam belli. Item excusarentur milites, qui crucifixerunt Christum ex ignorantia, sequentes edictum Pilati. Item etiam excusaretur populus Iudaeorum, qui persuasus a maioribus clamabat, "Tolle, tolle, crucifige eum."² IV Prop.

27. Tertium dubium: Quid faciendum, cum iustitia belli dubia est, h. e., cum in utramque partem sunt rationes apparentes et probabiles. Dubium III. Prima propositio: Quoad ipsos principes, videtur quod, si unus est in legitima possessione, quod,³ manente dubio, non possit alius bello et armis repetere. Vt, e. g., si Rex Francorum est in legitima possessione Burgundiae, si etiam est dubium an habeat ius ad illam necne, non videtur quod Imperator possit armis repetere; et e contrario nec⁴ Rex Francorum Neapolim aut Mediolanum, si dubium est cuius iuris sint. Probatur, quia in dubiis melior est condicio possidentis. Ergo non licet spoliare possessorem pro re dubia.⁵ Item, si res ageretur coram iudice legitimo, nunquam in re dubia spoliaret⁶ possessorem. Ergo dato quod illi principes, qui praetendunt ius, sint iudices⁷ in illa causa, non possunt⁸ licite spoliare possessorem, manente dubio de iure. Item in rebus et causis privatorum nunquam in causa dubia licet spoliare possessorem legitimum. Ergo nec in I Prop.

¹S omits *sapientum et*.

²Ioan., cap. 19, v. 15; cf. also *Luc.*, cap. 23, vv. 21-23; *Marc.*, cap. 15, vv. 13-14; *Matth.*, cap. 27, v. 23.

³M and S omit *quod*, but see p. 204.

⁴B omits *nec*.

⁵M has *in re dubia* and S has simply *re dubia*.

⁶M and S insert *iudex*, which may have been added by M to secure greater completeness. See p. 197.

⁷M has *ille princeps, qui praetendit ius, sit iudex*.

⁸B and M have *potest*. As the passage runs in B, there is an anacolouthon from the plural to the singular, which M removed by using the singular throughout—a process that involved the changing of five words. The change of *potest* to *possunt* is the simpler method of removing the anacolouthon and is easier to explain.

causis principum; leges enim sunt principum. Si ergo secundum leges humanas non licet in causa dubia spoliare legitimum possessorem, ergo¹ merito potest obici principibus, "Patere legem, quam ipse tuleris; quod enim quisque iuris in alios² statuit, ipse eodem iure uti debet." Item alias esset bellum iustum ex utraque parte, et bellum nunquam componi posset. Si enim in causa dubia licet uni armis repetere, ergo alteri defendere, et, postquam unus recuperasset, posset iterum alius reposcere, et sic nunquam esset finis bellorum cum pernicie et calamitate populorum.

II Prop.

28. Secunda propositio: Si civitas aut provincia, de qua dubitatur, non habet legitimum possessorem, ut si deserta est morte legitimi domini et dubitatur an haeres sit Rex Hispaniae aut Rex Gallorum nec potest certum sciri de iure, videtur³ quod, si unus velit componere et dividere vel compensare pro parte, quod⁴ alter tenetur recipere condicionem, etiamsi sit vi⁵ potentior et possit armis totum occupare; nec haberet⁶ iustam causam belli. Probatur, quia alius non facit iniuriam in pari causa petendo⁴⁴⁰ aequalem partem. Item in privatis causis etiam, in re dubia non liceret totum occupare. Item eodem modo bellum esset iustum ex utraque parte. Item iustus iudex neutri totum addiceret et attribueret.

III Prop.

29. Tertia propositio: Qui dubitat de iure suo, etiamsi pacifice possideat,⁷ tenetur examinare causam diligenter et audire pacifice rationes alterius partis, si forte possit certum scire vel pro se vel pro alio. Haec probatur, quia iam non bona fide possidet, qui dubitat et negligit scire veritatem. Item in causa matrimoniali, si quis etiam legitimus possessor incipit dubitare veritatem,⁸ utrum haec mulier sit sua vel alterius, certum est quod tenetur rem examinare. Ergo eadem ratione in aliis causis. Item principes sunt iudices in propriis causis, quia non habent superiores. Sed certum est quod, si quis contra legitimum possessorem opponit aliquid, quod⁹ iudex tenetur examinare causam. Ergo etiam principes in re¹⁰ dubia tenentur examinare causam.

IV Prop.

30. Quarta propositio: Examinata causa, quamdiu rationabiliter perseverat dubium, legitimus possessor non tenetur cedere possessioni,¹¹ sed potest licite retinere. Patet primo, quia iudex non posset eum exspoliare. Ergo nec¹² ipse tenetur cedere, nec in toto nec in parte. Item⁴⁴¹ in causa matrimoniali¹³ non tenetur cedere, ut in cap. *inquisitioni*,¹⁴ De

¹For repetition of *ergo*, see p. 204.

²S has *alium*.

³B and M have *sciri: iure videtur*, but S has the obviously correct emendation.

⁴For repetition of *quod*, see p. 204.

⁵M omits *vi*.

⁶S has *habeat*.

⁷M has *possideas*, which is corrected in M's Errata to *possideat*.

⁸M omits *veritatem*.

⁹M and S omit the first *quod*, whereas they usually omit the second *quod*, but see p. 204.

¹⁰S omits *re*.

¹¹S has *possessione*.

¹²B has *non*; cf. page 288, n. 4.

¹³M and S add *in re dubia*, but this seems to be an instance of M's amplifying to avoid a fancied ambiguity.

¹⁴*Decret.*, 5, 39, 44, which is an excerpt from POPE INNOCENT III.

sententia excommunicationis, et in cap. *Dominus*,¹ De secundis nuptiis. Ergo nec in aliis causis. Et Adrianus expresse (qu. 2, *Quotlib.* 2) tenet quod dubitans licite potest retinere possessionem, hoc quoad ipsos principes in re dubia. Sed quoad subditos in dubio belli iusti, Adrianus quidem (*Quotlib.* 2, ad primum arg. principale) dicit quod subditus dubitans de iustitia belli, i. e., utrum causa, quae allegatur, sit sufficiens, vel simpliciter an subsit causa sufficiens ad indicendum² bellum, non potest licite, etiam ad imperium superioris, militare in tali bello. Probat, quia exponit se periculo peccati mortalis. Item, quia, "quod³ non est ex fide, peccatum est,"⁴ quod secundum doctores et veritatem non solum intellegitur contra conscientiam certam aut contra opinativam, sed etiam contra dubiam. Idem videtur tenere Sylvester (verbo *bellum*, I, § 9).⁵

31. Sed sit quinta propositio: Primo non est dubium quin in bello defensivo liceat subditis in re dubia sequi principem suum in bellum, immo
442 quod teneantur sequi, sed etiam de bello offensivo. Probatur primo, quia princeps, ut dictum est, nec potest semper nec debet reddere subditis rationes belli, et, si subditi non possint militare, nisi postquam scirent iustitiam belli, Respublica periclitaretur vehementer et pateret iniuriæ ostium. Item in dubiis tutior sequenda est pars. Sed, si subditi in casu dubii non sequantur principem suum in bellum,⁶ exponunt se periculo prodendi hostibus Rempubicam, quod multo gravius est quam pugnare contra hostes cum dubio. Ergo debent potius pugnare. Item manifeste probatur, quia lictor tenetur exsequi sententiam iudicis, etiamsi dubitet an sit iusta, contrarium enim esset valde periculosum. Item hoc argumentum videtur defendere Augustinus contra Manichæum⁷: "Iustus si forte etiam sub rege, homine sacrilego, militet, recte potest eo iubente bellare, si quod sibi iubetur⁸ vel non esse contra Dei præceptum, certum est, vel utrum sit, certum non est" (23, qu. 1, can. *quid*⁹ *culpatur*¹⁰). Ecce Augustinum diffinientem expresse quod¹¹ si non est certum—i. e., si dubium est—an sit contra Dei præceptum, quod licitum est subdito bellare. Nec
443 Adrianus se expedire potest ab illa Augustini auctoritate, quamvis se in omnem partem vertat¹²; sine dubio enim conclusio nostra est determinatio Augustini. Nec valet dicere quod talis debet tollere dubium et formare sibi conscientiam quod bellum sit iustum; nam stat quod moraliter loquen-

V Prop.,
qua refellitur
Adriani sen-
tentia.

Est hic locus
lib. 22. Contra
Faustum, cap.
75, licet non
omnino eis-
dem verbis.

¹*Decret.*, 4, 21, 2, which is an excerpt from a letter of POPE LUCIUS III to all Christian captives of the Turks (*universis Christianis in captivitate Sarracenorum positis*).

²B has *iudicandum*.

³B omits *quod*.

⁴*Ad Rom.*, cap. 14, v. 23: "Omne autem quod non est ex fide, peccatum est." B omits *peccatum est*.

⁵B omits this sentence.

⁶M has *in bello*.

⁷*Contra Faustum Manichæum*, lib. 22, cap. 75: "Cum ergo vir iustus, si forte sub rege homine etiam sacrilego militet, recte poscit illo iubente bellare civicae pacis ordinem servans; cui quod iubetur, vel non esse contra Dei præceptum certum est, vel utrum sit, certum non est, ita ut," etc.

⁸B has *iuvetur*.

⁹B and M have *quod*.

¹⁰*Decr.*, 2, 23, 1, 4, which is an excerpt from ST. AUGUSTINE, *Contra Faustum Manichæum*, lib. XXII, cap. 75; FRIEDBERG has *Ergo vir iustus, si . . . illo iubente . . . si, vice pacis ordinem servans, quod sibi . . . præceptum, etc.*, as above.

¹¹M and S omit this *quod*, although they usually omit the second *quod*. For the repetition of *quod*, see p. 204.

¹²B has *tutat*.

- Causa erroris Adriani. do¹ non possit, sicut in aliis dubiis. Adrianus autem videtur errasse in hoc, quod putavit, si dubito an hoc bellum sit iustum principi vel utrum² sit causa iusta huius belli, quod statim consequatur quod dubito³ utrum liceat mihi ire ad hoc bellum necne. Fateor enim quod nullo modo licet facere contra dubium conscientiae et, si dubito an liceat mihi facere hoc necne, pecco si faciam. Sed non sequitur, dubito an sit iusta causa huius belli, ergo dubito an liceat mihi bellare vel militare in hoc bello. Immo oppositum sequitur. Si enim dubito an bellum sit iustum, sequitur quod licet mihi ad imperium principis mei militare,⁴ sicut⁵ non sequitur, lictor dubitat an sententia iudicis iusta sit, ergo dubitat an liceat ei⁶ exsequi sententiam, immo scit quod tenetur exsequi. Et idem est de hoc dubio⁷: Dubito⁸ an haec sit uxor mea, ergo teneor ei reddere debitum.
- Dubium IV. 32. Quantum dubium est: An possit esse bellum iustum ex utraque parte. Repondetur.⁹ Prima propositio: Seclusa ignorantia, manifestum est quod non potest contingere, quia, si constat de iure et iustitia utriusque¹⁰ 444 partis, non licet in contrarium bellare, nec offendendo nec defendendo. Secunda: Posita ignorantia probabili facti¹¹ aut iuris, potest esse ex ea parte, qua vera iustitia est, bellum iustum per se, ex altera autem parte bellum iniustum, i. e., excusatum a peccato bona fide, quia ignorantia invincibilis excusat a toto. Item saltem ex parte subditorum saepe potest contingere; dato enim quod princeps, qui gerit bellum iniustum, sciat iniustitiam belli, tamen (ut dictum est) subditi bona fide possunt sequi principem suum, et sic ex utraque parte subditi licite pugnant.
- Dubium V. 33. Sed ex hoc sequitur quintum dubium: Vtrum qui ex ignorantia secutus est bellum iniustum, si postea constiterit ei de iniustitia belli, utrum¹² teneatur restituere, sive loquamur de principe sive de subdito. I Prop. Primo propositio: Si quidem habebat probabilitatem de iniustitia¹³ belli, tenetur, adveniente notitia de iniustitia,¹³ restituere ablata, quae nondum consumpsit, i. e., quantum factus est locupletior; non autem quae consumpsit, quia regula iuris est quod, qui non est in culpa, non debet esse in damno¹⁴; sicut qui bona fide fuit in convivio lautissimo furis, ubi¹⁵ res furtivae consumptae sunt, non tenetur restituere, nisi forte quantum domi 445 consumpsisset. Si autem dubitavit de iniustitia belli secutus auctoritatem principis, Sylvester (in verbo *bellum*, I, § 9¹⁶) dicit quod tenetur de omnibus, quia mala fide pugnavit.
- Sylvestri sententia.

¹B omits *moraliter loquendo*; S has *mortaliter loquendo*.

²B has *contrarium* in place of *utrum*.

³M and S have *dubitem*. ⁴M has *bellare*.

⁵B has *sic*. ⁶B omits *ei* and S has *sibi*.

⁷B omits *idem est de hoc dubio*.

⁸M has *Ego dubito*. ⁹B omits *Respondetur*.

¹⁰B has simply *utrius*. ¹¹M has *facta*.

¹²M and S omit *utrum*. For the repetition of this *utrum*, see p. 205.

¹³B has *iustitia*. ¹⁴B has *in damnum suum*.

¹⁵B has *et* and M has *ubi scilicet*.

¹⁶¶ 3: "Cum autem sciverit aut probabiliter crediderit bellum iniustum, restituere omnia quae habet, et etiam quae consumpta, si semper fuit dubius, quia non fuit possessor bonae fidei."

Sed sit secunda propositio conformiter ad supra dicta: Quod¹ nec iste tenetur de consumptis, sicut nec alius, quia (ut dictum est) licite et bona fide pugnavit. Sed esset verum, quod Sylvester dicit, si re vera dubitasset an liceret ire ad bellum, quia iam facit contra conscientiam. Sed est multum considerandum quod stat quod bellum sit iustum et licitum per se, illicitum autem Christianis.² Stat enim quod quis habeat ius ad recuperandam civitatem aut provinciam, et tamen ratione scandali fiat prorsus illicitum. Cum enim, ut supra dictum est, bella geri debeant pro bono communi, si ad recuperandam unam civitatem necesse est quod sequantur maiora mala in Republica, ut vastatio multarum civitatum, caedes magna mortalium, irritatio principum, occasiones novorum bellorum in perniciem Ecclesiae, item quod pagani detur opportunitas invadendi et occupandi terras Christianorum, indubitatum est quin teneatur princeps potius cedere iuri suo et abstinere se³ bello. Clarum est enim quod, si
 446 Rex Gallorum, v. g.,⁴ haberet ius ad recuperandum Mediolanum, ex bello autem et Regnum Galliae et ipsa provincia Mediolanensis paterentur⁵ intoleranda mala et calamitates graves, non licet ei recuperare, quia bellum ipsum aut fieri debet vel propter bonum Galliae aut Mediolani.⁶ Quando ergo e contrario⁷ utriusque magna mala ex bello futura sunt, non potest bellum iustum esse.

II Prop.
contra
Sylvestri
sententiam.

Notandum.

34. Circa aliam quaestionem, quantum liceat in bello iusto, sunt etiam multa dubia. Primum: An liceat in bello interficere innocentes. Et videtur quod sic, quia filii Israël primo interfecerunt infantes, ut patet *Ios.*, 6,⁸ in Iericho, et postea⁹ Saul (*I Reg.*, 15¹⁰) interfecit pueros in Amalec, utrumque ex auctoritate et mandato Domini. "Quaecumque autem scripta sunt, ad nostram doctrinam scripta sunt," ut patet (*ad Rom.*, 15¹¹). Ergo et nunc, si bellum sit iustum, licebit interficere innocentes.

Dubium I ex
quaestione
ultima prin-
cipali ortum.
Arg. pro parte
affirmativa.

35. De hoc dubio sit prima propositio: Nunquam licet per se et ex intentione interficere innocentem. Probatur primo (*Exod.* 23¹²): "Inson-tem et iustum non occides." Secundo, fundamentum iusti belli est iniuria, ut supra ostensum est. Sed iniuria non est ab innocente. Ergo non licet
 447 bello uti contra illum.¹³ Tertio, non licet in Republica pro delictis malorum punire¹⁴ innocentes. Ergo etiam nec pro iniuria malorum licet interficere¹⁵

I Prop.
Prob. 1.
Prob. 2.

Prob. 3.

¹M omits *Quod*.

²B has this reading, which ought to be retained, but here again M has substituted the more symmetrical reading (*per accidens*) for the more difficult reading (*Christianis*) and in this is followed by S. The retention of *Christianis* is strengthened by the use of *ratione scandali* a few lines farther on.

³S has *a* in place of *se*.

⁴B has *ex gratia*.

⁵B has *patientur*.

⁶B has *Mediolanenses*.

⁷B has *contra*.

⁸V. 21: "Et interfecerunt omnia quae erant in ea, a viro usque ad mulierem, ab infante usque ad senem."

⁹B and M have *post ea*.

¹⁰V. 8: "Omne autem vulgus interfecit in ore gladii."

¹¹V. 4.

¹²V. 7.

¹³B has *illud*.

¹⁴B has *interficere*.

¹⁵B has *punire* and in this is followed by M and S, but in the preceding sentence B has *interficere*, which M has replaced with *punire*. The argument of the passage is: "It is licit to punish guilty citizens of the State and to kill the enemy who wrongs us, but it is not licit to punish innocent citizens because of the crimes of guilty citizens nor to kill the innocent among the enemy because of the wrong done us by the guilty among them." Consequently, M did right in the preceding sentence in replacing *interficere* with *punire*, although the reason may have been to have the same verb in both sentences, and may not have been suggested by the manuscripts, but M did not complete the correction of the transposition existing in B by making the reciprocal change made above.

- innocentes apud hostes. Quarto, alias iam bellum esset iustum ex utraque parte, seclusa ignorantia, quod esse non potest, ut ostensum est. Et patet consequentia, quia innocentes certum est quod possent¹ se defendere contra quemcumque conantem interficere. Et confirmatur totum hoc *Deut.*, 20.² Mandatur³ filiis Israël, ut, cum vi ceperint civitatem, alios quidem interficiant, parcant autem mulieribus et parvulis.
36. Ex quo sequitur quod etiam in bello contra Turcas non licet interficere infantes. Patet, quia sunt innocentes. Immo nec feminas inter infideles.⁴ Patet, quia, quantum ad bellum spectat, praesumuntur innocentes, nisi forte constaret de aliqua femina quod esset in culpa. Immo idem videtur iudicium de innoxiiis agricolis apud Christianos, immo de alia gente togata et pacifica, quia omnes praesumuntur innocentes, nisi contrarium⁵ constaret. Hac etiam ratione sequitur quod nec licet interficere nec⁶ peregrinos nec hospites, qui versantur apud hostes, quia praesumuntur innocentes, nec re vera sunt hostes. Eadem ratione nec clericos nec reli-⁴⁴⁸ giosos,⁷ quia praesumuntur innocentes in bello, nisi constet de contrario, ut cum actualiter pugnant.⁸
- II Prop. 37. Secunda propositio: Per accidens autem, etiam scienter, aliquando licet interficere innocentes, puta cum oppugnatur arx aut civitas iuste, in qua tamen constat multos esse innocentes, nec possunt machinae solvi et alia tela vel ignis subici aedificiis, quin etiam opprimantur innocentes sicut nocentes. Probatur, quia alias non posset geri bellum contra ipsos nocentes et frustraretur iustitia bellantium; sicut e contrario, si oppidum oppugnatur iniuste et iuste defenditur, licet mittere machinas et alia tela in obsessores et in castra hostium, dato quod inter illos sint aliqui pueri aut⁹ innoxii.
- Animadver-
tendum hoc. Sed tamen est considerandum, quod paulo ante dictum est, quod oportet cavere ne ex ipso bello sequantur maiora mala quam vitentur per ipsum bellum. Si enim ad summam belli victoriam parum confert expugnare arcem aut oppidum, ubi est praesidium hostium et sunt multi innocentes, non videtur quod liceat ad expugnandum paucos nocentes occidere multos innocentes subiciendo ignem vel machinas vel alia ratione, qua indifferentem opprimantur innocentes cum nocentibus. Et tandem nun-⁴⁴⁹ quam videtur licitum interficere innocentes, etiam per accidens et praeter intentionem, nisi quando bellum iustum expediri et geri aliter non potest, iuxta¹⁰ illud *Matth.*, 13,¹¹ "Sinite crescere zizania, ne forte colligentes zizania, eradicetis simul et triticum."
- Breve et
resolutum
auctoris
responsum.

¹M has *possunt*.²Capp. 10-14; for wording, see p. 291.³B has *mandavit*.⁴M omits *inter infideles*.⁵B has *contra*.See, for example, *nec ipse tenetur cedere, nec in toto nec in parte*, p. 284, n. 12.⁷B omits *nec religiosos*.⁸B and M have *pugnat*.⁹B inserts *fuertint*.¹⁰B and M have *iuxta*, but M has corrected (?) this to *iusta* in the Errata prefixed to his edition.¹¹Vv. 28-30: "Visimus, et colligimus ea?" Et ait: "Non; ne forte colligentes zizania, eradicetis simul cum eis et triticum. Sinite utraque crescere usque ad messem."

38. Sed circa haec potest dubitari an liceat interficere innocentes, a quibus tamen in futurum imminet periculum. Puta pueri Saracenorum sunt innocentes, sed timendum merito est ne facti adulti pugnent contra Christianos et inferant bellum cum periculo. Et praeterea etiam togati puberes apud hostes, qui non sunt milites, praesumuntur innocentes, sed isti armabuntur postea in milites¹ et inferent periculum—an liceat tales interficere. Et videtur quod sic eadem ratione qua per accidens licet interficere alios innocentes. Item (*Deut.*, 20²) praecipitur filiis Israël, ut, cum expugnaverint aliquam civitatem, interficiant omnes puberes. Non est autem praesumendum quod omnes essent nocentes.

Dubium
incidens.

Respondetur ad hoc, licet posset fortasse defendi quod in tali casu
450 possint interfici, tamen credo quod nullo modo licet, quia non sunt facienda mala, ut vitentur etiam alia mala maiora, et intolerabile est quod occidatur aliquis pro peccato futuro. Et praeterea sunt alia remedia ad cavendum in futurum ab illis, ut captivitas, exsilium, etc., ut statim dicemus. Vnde sequitur quod, sive iam parta victoria sive in³ actu bellum geratur, si constat de innocentia alicuius militis⁴ et milites⁵ possunt eum liberare,⁶ tenentur.⁷

Respons.
auctoris.

Ad argumentum in contrarium respondeo⁸ quod illud factum fuit speciali mandato Dei, qui iratus et indignatus⁹ contra populos illos voluit perdere omnino; sicut misit ignem in Sodomam et Gomorrhham, qui devoraret tam innocentes quam nocentes. Ipse autem est Dominus omnium, nec dedit hanc licentiam ex lege communi. Et ad illud *Deut.*, 20,² posset eodem modo responderi. Sed quia illic data est lex belli communis in omne tempus futurum, potius videtur quod illud Dominus dixit, quia re vera omnes puberes reputantur in civitate inimica nocentes et non possunt distinguere innocentes a nocentibus. Ideo omnes possunt interfici.

Ad arg. pro
parte affirma-
tiva.

Ad locum
Deut. paulo
antea posi-
tum.

39. Secundum dubium est: An liceat in bello iusto¹⁰ spoliare innocentes
451 inter hostes.¹¹ Sitque prima propositio: Certum est quod licet spoliare innocentes bonis et rebus, quibus hostes adversum nos usuri sunt, ut armis, navibus, machinis. Patet, quia aliter victoriam consequi non possemus, quae est finis belli. Immo etiam licet accipere pecunias innocentum et comburere et corrumpere frumenta et¹² occidere equos, si ita opus est, ad debilitandum hostium vires. Ex quo sequitur corollarium quod, si bellum sit perpetuum, licet indifferenter exspoliare omnes apud hostes, tam nocentes quam innocentes, quia ex opibus suorum hostes alunt bellum iniustum et e contrario¹³ debilitantur vires eorum, si cives eorum spoliantur.

Dubium II.

I Prop.

Coroll.

¹M has *isti postea sumunt arma*.

²Vv. 10–14; for wording, see p. 291.

³S omits *in*.

⁴S omits *militis* here and inserts *militibus* after *constat*. The reading of S is of course much simpler and fits in more exactly with the argument of the passage. On the other hand, it is almost incredible to suppose that B and M would have left unchanged such a difficult passage, had there been a mistake therein. Moreover, the author may have intended to assert his position so strongly that “no matter whether victory has been obtained or the battle is still raging, if even a soldier’s innocence is evident and the soldiers can free him, they are bound to do so.”

⁵S omits *et milites*.

⁶M has *cum liberare*, S has *cum liberare et*.

⁷B adds *cum salvare*.

⁸S has *respondetur*.

⁹M has *indignatus*.

¹⁰B omits *in bello iusto*.

¹¹M omits *inter hostes*.

¹²B, M, and S omit this *et*, a word easy to overlook.

¹³B has *econtra*; M and S have *contra*, but see p. 277, n. 7; p. 287, n. 7; and elsewhere.

II Prop.

Sylvester.

Pia quidem
Sylvestri haec
est sententia,
non tamen vi-
detur auctori
necessaria.

III Prop.

Litterae re-
praesalium
per se quidem
non iniustae,
attamen peri-
culosae.

Dubium III.

Respons.
unica propo-
sitione con-
tentum.

Christiani a
Christianis
iure belli non
fiunt servi.

40. Secunda propositio: Si bellum satis commode geri potest non spoliando agricolas aut alios innocentes, videtur quod non liceat eos spoliare. Hoc tenet Sylvester (in verbo *bellum*, I, § 10¹), quia bellum fundatur in iniuria, ergo non licet iure belli uti in innocentes, si aliunde potest recompensari² iniuria.³ Immo addit Sylvester quod, etiamsi fuerit iusta causa spoliandi innocentes, quod,⁴ transacto bello, tenetur victor restituere illis quicquid superest. Sed hoc non puto esse necessarium, quia, ut infra dicitur, si iure belli factum est, omnia cedunt in favorem et ius iustum bellum gerentium. Vnde, si licite sunt capta, puto quod non sunt obnoxia 452 restitutioni. Dictum tamen Sylvestri pium est et non improbabile. Spoliare autem peregrinos et hospites, qui sunt apud hostes, nisi constet de culpa illorum, nullo modo licet, quia illi non sunt de numero hostium.

41. Tertia propositio: Si hostes nolunt restituere res iniuria ablatas, et non possit, qui laesus est, aliunde commode recuperare, potest undecumque satisfactionem capere, sive a nocentibus sive ab innocentibus. Vt, si latrones Galli fecerint praedas in agrum Hispanorum et Rex Francorum nolit cogere illos ad restitutionem, cum possit, possunt Hispani auctoritate principis sui⁵ spoliare mercatores Gallos aut agricolas quantumcumque innocentes, quia, licet forte a principio Respublica aut princeps Gallorum non fuerit in culpa, iam est in culpa, quia "neglegit vindicare," ut ait Augustinus,⁶ "quod improbe a suis factum est," et princeps laesus potest ex omni membro et parte Reipublicae satisfactionem accipere. Vnde litterae marcharum aut repraesalium, quae a principibus in huiusmodi casibus conceduntur, non sunt per se iniustae, quia per negligentiam et iniuriam alterius principis, concedit laeso suus princeps, ut possit recuperare bona sua, etiam ab innocentibus; sunt autem periculosae et 453 praebent occasionem rapinarum.

42. Tertium dubium: Dato quod non liceat interficere pueros et alios innocentes, an saltem liceat⁷ ducere illos in captivitatem et servitutem? Sitque pro illius declaratione unica propositio: Eodem modo licet ducere innocentes in captivitatem, sicut licet spoliare illos, quia libertas et captivitas inter bona fortunae reponuntur. Vnde, quando bellum est talis condicionis quod⁸ licet spoliare indifferenter omnes hostes et occupare omnia bona illorum, etiam licet ducere in captivitatem omnes hostes, sive nocentes sive innocentes.⁹ Et cum bellum adversus paganos sit huiusmodi, quia est perpetuum et nunquam satisfacere possunt pro iniuriis et damnis illatis, ideo non est dubitandum quin liceat et pueros et feminas Saracenorum ducere in captivitatem et servitutem. Sed quia iure gentium inter Christianos videtur receptum ut Christiani iure belli non fiant servi, in

¹¶ 3: "Rapinam etiam committunt, si spoliant rusticos aut viatores aut existentes in agricultura."

²M has *compensari*.

³B has *iniuriarum*.

⁴M and S omit this *quod*, but see p. 204.

⁵B omits *sui*.

⁶Quaestiones in Heptateuchum, lib. VI, qu. 10; for wording see p. 274, n. 9.

⁷S has *licet*.

⁸Note the correlation of *talīs . . . quod*; cf. p. 205.

⁹S omits *sive innocentes*.

bello quidem inter Christianos non¹ licet, sed,² si³ opus est ad finem belli, captivos ducere etiam innocentes, ut pueros et feminas, non quidem in servitutem, sed ut pro illorum redemptione pecunias recipiamus, licitum
454 esset.⁴ Quod tamen extendendum non est ultra quam belli necessitas postulet et consuetudo legitime belligerantium obtinuit.

43. Quartum dubium est: Vtrum saltem obsides, qui vel tempore Dubium IV.
induciarum vel peracto bello ab hostibus recipiuntur, interfici possint, si hostes fidem fregerint et conventis non steterint. Respondeo per unicum Respondetur
conclusionem: Quod⁵ si obsides alias sint de numero nocentum, puta qui unica con-
tulerunt contra eos arma, interfici iure possunt in eo casu; si autem sunt clusione.
innocentes, ex supra dictis constat quod interfici non possunt, ut cum sunt⁶ pueri aut feminae aut alii innocentes.

44. Quintum dubium: An saltem in bello iusto⁷ liceat interficere Dubium V.
omnes nocentes. Pro responsione notandum est quod, ut ex supra dictis Notanda haec
patet, bellum geritur primo ad defendendum nos et nostra; secundo, ad quattuor.
recuperandum res ablatas; tertio, ad vindicandum acceptam iniuriam; quarto, ad pacem et securitatem parandam.

45. His praemissis sit prima propositio: In ipso actuali conflictu I Prop.
proelii vel in oppugnatione aut defensione civitatis licet indifferenter occidere omnes, qui contra pugnant, et breviter, quamdiu res est in pe-
455 riculo. Hoc patet, quia aliter rem bene gerere non possent bellantes, nisi tollendo omnes impediētes et contra pugnantes. Sed totum dubium est et difficultas: An, parta iam victoria et ubi periculum non est ab hostibus, an⁸ liceat interficere omnes, qui contra arma tulerunt. Et videtur aperte quod sic, quia, ut supra relatum⁹ est, inter praecepta militaria, quae Dominus dedit (*Deut.*, 20¹⁰), unum est, ut, expugnata civitate hostium, interficerent¹¹ omnes habitatores. Verba illius loci sunt haec: "Si quando accesseris ad expugnandam civitatem, offeres ei primum pacem. Si receperit et aperuerit tibi portas, cunctus populus, qui in ea est, salvabitur et serviet tibi sub tributo. Sin autem foedus inire noluerit et coeperit contra te bellum, oppugnabis eam. Cumque tradiderit Dominus Deus tuus eam¹² in manu tua, percuties omne, quod in ea est¹³ generis masculini, in ore gladii, absque mulieribus et infantibus."

In quo consistit huius dubii difficultas. Ratio pro parte affirmativa.

46. Secunda propositio: Parta victoria et rebus iam extra periculum II Prop.
positis, licet interficere nocentes. Probatur, quia (ut iam dictum est) non solum ordinatur bellum ad recuperandas res, sed etiam ad vindicandum iniuriam. Ergo pro iniuria praeterita licet interficere auctores iniuriae.

¹B omits *non*. All of the differences in this sentence hinge upon the retention or non-retention of this *non*. If the *non* is omitted, *in bello quidem inter Christianos* must be taken with *non fiant servi*, and *sed* and *licitum esset* must be omitted. But that part of the sentence from *si opus est* to the end seems to be an exception, to a general rule, and it is hardly likely that *M* would have made so many changes without having some foundation in the manuscripts.

²B omits *sed*, an omission easy to make, if it was abbreviated in the manuscripts, since the following word begins with *s*.

³B inserts *ita*.

⁴B omits *licitum esset*; S has *licitum est*.

⁵M and S omit *Quod*.

⁶M has *sint*.

⁷B omits *iusto* and S has *iuste*.

⁸S omits *an*; for the repetition of *an*, see pp. 204-205.

⁹M has *dictum*.

¹⁰Vv. 10-14.

¹¹M has *interficerentur*.

¹²VULGATE has *illam*.

¹³VULGATE has this *est* after *masculini*.

Item hoc licet in proprios cives malefactores. Ergo etiam in extraneos, quia (ut supra dictum est) belli princeps iure belli auctoritatem habet in 456 hostes, sicut legitimus iudex et princeps. Item, quia, licet in praesentia non esset periculum ab hostibus, tamen in futurum securitas non haberetur, nisi timore supplicii hostes continerentur.¹

III Prop.

47. Tertia propositio: Solum ad vindicandam iniuriam, non semper licet interficere omnes nocentes. Probatur, quia etiam inter cives non liceret, ubi etiam esset delictum totius civitatis aut provinciae, interficere omnes delinquentes, nec in communi rebellione liceret occidere et perdere totum populum. Vnde pro simili facto Theodosius ab Ambrosio ab Ecclesia est prohibitus. Hoc enim esset contra publicum bonum, quod tamen est finis belli et pacis. Ergo etiam non licet occidere² omnes nocentes ex hostibus. Oportet ergo habere rationem iniuriae³ ab hostibus acceptae et damni illati et aliorum delictorum, et ex hac consideratione procedere ad vindictam et animadversionem, omni atrocitate et inhumanitate seclusa. In hoc enim proposito Cicero (secundo *Officiorum*⁴) ait quod animadvertendum est in noxios, quantum aequitas et humanitas patiantur. Et Sallustius⁵: "Maiores⁶ nostri religiosissimi mortales nihil victis eripiebant praeter iniuriae licentiam."

IV Prop.

48. Quarta propositio⁷: Aliquando etiam licet et expedit interficere 457 omnes nocentes. Probatur, quia etiam bellum geritur ad pariendam⁸ pacem et securitatem. Sed aliquando aliter obtineri securitas non potest, nisi tollendo omnes hostes, et hoc maxime videtur contra infideles, a quibus nunquam ullis⁹ condicionibus pax aequa¹⁰ sperari potest. Et ideo unicum remedium est tollere omnes, qui contra arma ferre possunt, modo iam fuerint in culpa. Et ita intellegendum est illud praeceptum *Deuteronomiae*.¹¹ Alias autem in bello contra Christianos non puto quod hoc sit licitum. Cum enim necesse sit ut veniant scandala (ut habetur *Matth.*, 18¹²) et bella inter principes, si semper victor interficeret adversarios omnes, esset¹³ in perniciem generis humani et Christianae religionis et orbis cito in solitudinem redigeretur, nec bella pro bono publico, sed in publicam calamitatem perditte gererentur. Oportet ergo ut pro mensura delicti sit plagarum modus,¹⁴ nec ultra progrediatur vindicta, in quo etiam habenda est ratio

Hic obiter
respondetur
ad rationem
pro parte
affirmativa
post primam
propositio-
nem adlatam.

¹M omits nisi . . . continerentur.

²B has tollere.

³S has iniuriae.

⁴Cap. 5 (last sentence): "Ulciscamurque eos, qui nocere nobis conati sint, tantaque poena afficiamus, quantum aequitas humanitasque patitur."

⁵*De Catilinae coniuratione*, cap. 12, §§ 3-4: "Operae pretium est, cum domos atque villas cognoveris in urbium modum exaedificatas, visere templa deorum, quae nostri maiores, religiosissimi mortales, fecere. Verum illi delubra deorum pietate, domos suas gloria decorabant, neque victis quicquam praeter iniuriae licentiam eripiebant."

⁶S follows M, which inserts inquit here.

⁷B omits Quarta propositio.

⁸M has *parendum* (corrected to *parandum* in the Errata prefixed to M) and S has *parandam*, but see p. 280, n. 5.

⁹B has *illis*.

¹⁰M omits *aequa*.

¹¹M and S add 20. The reference is to *Deut.*, cap. 20, vv. 10-14; for the wording, see p. 291.

¹²V. 7: "Necesse est enim ut veniant scandala."

¹³M has *essent*.

¹⁴*Deut.*, cap. 25, v. 2: "Pro mensura peccati erit et plagarum modus."

et consideratio quod (ut supra dictum est) subditi non tenentur nec debent examinare causas belli, sed possunt sequi principem suum in bellum, contenti auctoritate principis et publici consilii. Vnde pro maiori parte, 458 licet ex altera parte sit bellum iniustum, tamen milites, qui veniunt ad bellum et pugnant in bello aut defendunt vel oppugnant civitates, ex utraque parte sunt innocentes. Et ideo cum iam victi sunt et non est periculum ab illis, credo quod interfici non possunt, non modo omnes, sed¹ ne unus quidem ex illis, si praesumitur quod bona fide in proelium venerunt.

49. Sextum dubium: An liceat interficere deditos aut captivos, supposito etiam quod fuerunt nocentes. Respondetur quod per se loquendo nihil obstat quominus capti in bello iusto² aut dediti, si fuerunt nocentes, interfici possint,³ servata aequitate. Sed quia in bello multa iure gentium constituta sunt, videtur receptum consuetudine et usu belli ut captivi, parta victoria (nisi forte sint profugae) et periculo transeunte,⁴ non interficiantur,⁵ et servandum est ius gentium eo modo, quo inter bonos viros servari consuetum est. De deditis autem non lego nec audio talem consuetudinem; immo in ditionibus arcium, civitatum, solent, qui se dederunt, cavere sibi condicionibus, ut salva sint capita et salvi mittantur, scilicet veriti ne, si⁶ simpliciter et nullis condicionibus dedantur, inter- 459 ficiantur; et hoc aliquoties factum legimus. Vnde non videtur iniquum ut, si oppidum nihil cavendo dedatur, quin⁷ mandato principis aut iudicis aliqui, qui fuerunt notiores,⁸ occidantur.

Dubium VI.

Respons.
auctoris.

50. Septimum dubium: Vtrum omnia capta in bello iusto fiant capientium et occupantium. Prima propositio: Non est dubitandum quin omnia capta in bello iusto usque ad sufficientem satisfactionem rerum ablatarum per iniuriam et etiam impensarum, quod⁹ fiant occupantium. Nec indiget probatione,¹⁰ quia ille est finis belli. Sed, seclusa consideratione et restitutionis et satisfactionis et¹¹ stando in iure belli distinguendum videtur¹²; nam capta in bello aut sunt¹³ mobilia (ut pecuniae, vestes, argentum, aurum) aut immobilia (ut agri, oppida, arces).

Dubium VII.

I Prop.

51. Quo supposito, sit¹⁴ secunda propositio: Mobilia quidem iure gentium omnia fiunt occupantis, etiamsi excedant compensationem dam- II Prop.
norum. Hoc patet ex l. si quid bello¹⁵ et l. hostes,¹⁶ ff., De captivis,¹⁷ et

¹B omits non . . . sed and perhaps this is only an interpolation of M made for the sake of a fancied completeness. ²B has iniusto.

³M and S insert per se loquendo here, but this seems to be a repetition of the same words in the preceding line.

⁴M puts et periculo transeunte after victoria, but the parenthesis belongs only to the first ablative absolute. S has transeundo for transeunte.

⁵M has interficiatur.

⁶M and S omit si.

⁷M omits quin, but see p. 205.

⁸M has nocentiores.

⁹M and S omit quod, but see p. 204.

¹⁰M adds haec propositio.

¹¹B has sed, which is not indefensible.

¹²M has est in place of videtur.

¹³S omits sunt here and inserts sunt after in in the preceding line.

¹⁴B omits these three words and M attaches them to the end of the preceding sentence.

¹⁵Dig., 49, 15, 28, which is an excerpt from LABEO, *Pithana a Paulo epitomata*, lib. IV. B, M, and S cite this law as si quid in bello.

¹⁶Dig., 49, 15, 24, which is an excerpt from ULPIAN, *Institutiones*, lib. I.

¹⁷The full title is *De captivis et de postliminio et redemptis ab hostibus*.

Dist. 1, can. *ius gentium*,¹ et expressius *Inst.*, De rerum divisione, § *item ea quae ex hostibus*,² ubi dicitur quod "iure gentium, quae ab hostibus capiuntur, statim nostra fiunt, adeo ut etiam liberi homines in nostram servitutem deducantur." Et Ambrosius (*Libro de*³ *patriarchis*⁴) dicit, cum Abraham occidit quattuor reges, praedam quidem fuisse Abrahae victoris, 460 quanquam recusavit accipere (*Gen.*, 14⁵) et 23, qu. 5, can. *dicat aliquis*.⁶ Et confirmatur ex auctoritate Domini, *Deut.*, 20, ubi de civitate expugnanda dicit, "Omnem praedam exercitui divides, et comedes de spoliis hostium tuorum." Hanc sententiam tenet Adrianus in quaestione de restitutione, in particulari quaestione de bello, et Sylvester, in verbo *bellum*, § 1 et § 9,⁷ ubi dicit⁸ quod "qui iuste pugnat,⁹ non tenetur restituere praedam, 23, qu. 7, can. *si de rebus*.¹⁰ Ex quo infertur¹¹ quod capta in bello iusto non compensantur cum debito principali, ut tenet etiam Archidiaconus¹² (23, qu. 2, can. *Dominus noster*¹³). Ita tenet Bartolus in dicta l. *si quid bello*.¹⁴ Et hoc intellegitur, etiamsi hostis sit paratus aliis satisfacere de damno et iniuriis. Quod tamen limitat Sylvester, et bene, quousque secundum aequitatem sit sufficienter satisfactum de damno et iniuria. Non enim est intellegendum quod, si Galli exciderint unum pagum aut ignobile oppidum Hispaniae, quod¹⁵ liceat Hispanis (etiam si possint) praedari totam Galliam, sed pro modo et qualitate iniuriae arbitrio boni viri.

52. Sed ex hac determinatione sequitur dubium: An liceat permittere militibus civitatem in praedam. Respondetur, et sit tertia propositio: 461 Hoc quidem¹⁶ per se non est illicitum, si necessarium est ad bellum gerendum vel deterrendos hostes vel ad accendendum militum animos. Ita Sylvester

Coroll.

Dubium
incidens.
Respons.
III Prop.
Sylvester.

¹*Decr.*, 1, 1, 9, which is an excerpt from ST. ISIDORE of Seville, *Etymologiae*, lib. v, cap. 6.

²*Inst.*, 2, 1, 17: "Item ea quae ex hostibus capimus, iure gentium statim nostra fiunt: adeo quidem, ut et liberi homines in servitutem nostram deducantur, qui tamen, si evaserint nostram potestatem et ad suos reversi fuerint, pristinum statum recipiunt."

³S adds *Abrah.*

⁴*Lib.* 1, cap. 3, which is found in the CORPUS IURIS CANONICI as *Decr.*, 2, 23, 5, 25.

⁵Cap. 13 et seqq.

⁶*Decr.*, 2, 23, 5, 25; B and M have simply 24, q. 5.

⁷¶2: "Is, qui iuste pugnavit, non tenetur ad restitutionem praedae, sed sit capientis (23, qu. 7, can. *si de rebus*). Ex quo infertur quod capta in bello iusto non compensantur cum debito principali, ut etiam tenet Archidiaconus (23, qu. 2, can. *Dominus noster*)."

⁸B omits *ubi dicit*.

⁹M and S have *pugnavit*, which SYLVESTER also has. This would lead one to suspect that M had changed the text to conform with SYLVESTER.

¹⁰*Decr.*, 2, 23, 7, 2, which is an excerpt from ST. AUGUSTINE, *Contra litteras Petiliani Donatistae*, lib. 11, cap. 43.

¹¹B, M, and S have *infert*, but SYLVESTER, whose words are being quoted, has *infert* (= *infertur*), and *infert* would not make good sense in the quotation from SYLVESTER. Whether the mistake was made by the writers of the manuscripts or the editor of B, it is impossible to say, although the latter is more probable, but it would not be difficult for one to fail to notice a light tilde.

¹²B and M have *Arch.*, which has been incorrectly extended in S to *Archiep.* See above, n. 7.

¹³*Decr.*, 2, 23, 2, 2; for wording of this canon, see p. 274, n. 9.

¹⁴*Dig.*, 49, 15, 28; B, M, and S have *si quid in bello*.

¹⁵B and M insert *de*, but S omits it altogether, apparently as not understanding it. That some word stood between *hoc* and *per* in the manuscripts is indicated by the fact that B has a word there, which is not rejected by M. That *de* is not the word is evident from its utter lack of sense. What then is the word? *Quidem* is suggested as making good sense (cf. *tamen*; three lines farther on) and as a word from which *de* could easily be derived (qdē).

¹⁶For repetition of *quod*, see p. 204.

verbo *bellum*,¹ § 10. Sicut etiam licet incendere civitatem ex rationabili² causa. Sed tamen quia ex huiusmodi permissionibus sequuntur³ multa saeva,⁴ crudelia praeter omnem humanitatem, quae a barbaris militibus committuntur, innocentum caedes et cruciatus, virginum raptus, matronarum stupra, templorum spolia, ideo sine dubio sine magna necessitate et causa, maxime civitatem Christianam, praedae tradere periniquum est. Sed, si ita necessitas belli exigat, non est illicitum, etiamsi credibile⁵ sit quod milites aliqua huiusmodi foeda et illicita patrent, quae tamen duces et interdicere et, quam possunt, prohibere tenentur.

53. Quarta propositio: His omnibus non obstantibus, non licet ^{IV Prop.} militibus sine auctoritate principis aut ducis⁶ praedas agere aut incendia facere, quia ipsi non sunt iudices, sed executores, et aliter facientes⁷ tenentur ad restitutionem.

54. Sed de bonis et⁸ rebus immobilibus maior difficultas est, et sit ^{V Prop.} quinta propositio: Non est dubium quin liceat occupare et tenere agrum ⁴⁶² et arces et oppida hostium, quantum necessarium est ad compensationem damnorum illatorum. Puta si hostes diruerunt arcem nostram, incenderunt civitatem, sylvas aut vineas aut oliveta, licebit occupare vicissim agrum hostium aut arcem aut oppidum et tenere. Si enim licet capere recompensationem⁹ ab hostibus pro rebus ablatis, certum est quod iure divino et naturali non plus licet hanc recompensationem accipere in rebus¹⁰ mobilibus quam in¹¹ immobilibus.

55. Sexta propositio: Etiam ad parandam securitatem et vitandum ^{VI Prop.} periculum ab hostibus, licet occupare et tenere arcem aliquam aut civitatem hostium necessariam ad defensionem nostram aut tollendam hostibus occasionem, unde possint nocere.

56. Septima propositio: Etiam pro iniuria illata et nomine poenae, ^{VII Prop.} h. e., in vindictam, licet pro qualitate iniuriae acceptae multare hostes parte agri aut etiam hac ratione occupare arcem aut oppidum. Sed hoc, ut diximus, debet fieri cum moderamine et non quantum viribus et potentia armorum occupari et expugnari potest. Et si necessitas et ratio belli postulat ut maior pars agri hostium occupetur et plures civitates capiantur, ⁴⁶³ oportet ut, compositis rebus et peracto bello, restituantur, tantum retinendo, quantum sit iustum pro recompensatione¹² damnorum et impensarum et pro vindicta iniuriae, servata aequitate et humanitate, quia poena debet esse proportionata culpae. Et intolerabile esset quod, si Galli agerent praedas in pecora Hispanorum vel incenderent pagum unum, quod¹³ liceret occupare totum Regnum Francorum. Quod autem hoc titulo liceat occupare aut partem agri aut aliquam civitatem hostium, patet ex illo¹⁴ *Deut.*, 20,¹⁵ ubi datur licentia in bello occupandi civitatem, quae¹⁶ pacem

¹B omits *verbo bellum*.

²B has *rationali*.

³B inserts *plurima*, but see p. 198.

⁴M inserts *et*.

⁵B has *crudele*.

⁶B omits *principis aut ducis*.

⁷B omits *aliter facientes*.

⁸B repeats *de* here.

⁹M and S have *compensationem*, but see the same word in the next line; see also p. 290, n. 2; and p. 295, n. 12.

¹⁰S omits *rebus*.

¹¹S omits *in*.

¹²M and S have *compensatione*, but see n. 9, above.

¹³For repetition of *quod*, see p. 204.

¹⁴B has *I* in place of *ex illo*.

¹⁵Capp. 10-13.

¹⁶B has *qui*.

recipere noluerit.¹ Item malefactores intraneos licet punire hoc modo, scilicet privando² illos domo aut agro aut arce pro rei qualitate. Ergo etiam extraneos. Item superior iudex potest commode multare auctorem iniuriae, tollendo scilicet ab eo civitatem aut arcem. Ergo et princeps, qui laesus est, hoc poterit, quia iure belli factus est tanquam iudex. Item Imperium Romanum hoc modo et titulo auctum et amplificatum est, occupando scilicet iure belli civitates et provincias hostium, a quibus iniuriam acceperant, et tamen Imperium Romanorum tanquam iustum et legitimum defenditur ab Augustino, Hieronymo, Ambrosio, Thoma et aliis sanctis doctoribus. Immo posset videri approbatum a Domino in illo loco, "Reddite quae sunt Caesaris Caesari,"³ et a Paulo, qui Caesarem 464 appellavit et (*ad Rom.*, 13⁴) admonet potestatibus sublimioribus et principibus subditos esse et tributa pendere eis,⁵ qui eo tempore omnes habebant auctoritatem ab Imperio Romano.

Dubium VIII.

Respons.

57. Octavum dubium: Vtrum liceat imponere victis hostibus tributa. Respondetur quod sine dubio licet, non solum ad compensandum damna, sed etiam ratione poenae et in vindictam. Hoc satis patet ex supra dictis et ex illo loco *Deut.*, 20,⁶ ubi dicitur⁷ quod, postquam ex iusta causa accesserint ad expugnandum civitatem, si receperit eos et aperuerit portas, cunctus populus, qui in ea est, salvabitur et serviet illis sub tributo. Et hoc ius et usus belli obtinuit.

Dubium IX.

I Prop.

58. Nonum dubium: An liceat deponere principes hostium et novos ponere et constituere vel sibi retinere principatum. Prima propositio: Hoc non passim et ex quacumque causa belli iusti licet facere, ut patet ex dictis. Nam poena non debet excedere quantitatem et rationem iniuriae.⁸ Immo poenae sunt restringendae et favores ampliandi, quae est non solum regula iuris humani, sed etiam naturalis et divini. Ergo, dato quod iniuria illata ab hostibus sit sufficiens causa belli, non semper erit sufficiens ad 465 exterminationem principatus hostis et ad depositionem legitimorum et naturalium principum; hoc enim esset prorsus saevum et inhumanum.

II Prop.

59. Secunda propositio: Non est negandum quin aliquando possint contingere sufficientes et legitimae causae vel ad mutandos principes vel ad occupandum principatum, et hoc vel pro multitudine et atrocitate damnum et iniuriarum, vel maxime quando aliter securitas et pax ab hostibus obtineri non potest, et immineret grande periculum Reipublicae ab illis, nisi hoc fieret. Hoc patet, si enim licet occupare civitatem ex causa, ut dictum est, ergo tollere principem civitatis. Et eadem est ratio de provincia et principe provinciae, si causa maior contingat.

¹B has voluerit.

²B has privare.

³*Matth.*, cap. 22, v. 21, and *Luc.*, cap. 20, v. 25.

⁴V. 1: "Omnis anima potestatibus sublimioribus subdita sit." And v. 7: "Reddite ergo omnibus debita: cui tributum, tributum; cui vectigal, vectigal; cui timorem, timorem; cui honorem, honorem."

⁵B omits *eis*.

⁶Capp. 10-13.

⁷B, M, and S have *dicit*, but compare this with *mandatur* (p. 288, n. 3), *praecipitur* (p. 289), and *datur* (p. 295), where the same sentiment is expressed (a paraphrase of *Deut.*, cap. 20, vv. 10-13), and see my note on *infertur*, above (p. 294, n. 11).

⁸Cf. *Deut.*, cap. 25, v. 2: "Pro mensura peccati erit et plagarum modus."

Sed notandum circa VI, VII, VIII, et IX dubium quod aliquando, Notandum.
immo frequenter, non solum subditi, sed etiam principes ipsi, qui re vera
non habent causam iustam, tamen bona fide gerunt bellum, ita, inquam,
bona fide, quod¹ excusantur ab omni culpa, puta cum, facta diligenti
examinatione, ex sententia doctorum et bonorum virorum geritur bellum.

466 Et cum nemo debeat sine culpa puniri in tali casu, quamvis liceat victori
recuperare res ablatas et forte impensam belli, tamen, sicut non licet, parta
victoria, quemcumque² interficere, ita nec ultra iustam satisfactionem
occupare nec exigere in rebus temporalibus, quia omnia alia fieri non
possunt nisi nomine poenae, quae in innocentes cadere non debet.

60. Ex his omnibus possunt componi pauci canones et regulae belli-
gerandi. Primus canon: Supposito quod princeps habet auctoritatem
gerendi bellum, primum omnium debet non quaerere occasiones et causas
belli, sed, "si fieri potest, cum omnibus hominibus pacem habere," ut Tres belli-
gerandi
canones.
Paulus praecepit (*ad Rom.*, 12³). Debet autem recogitare quod alii sunt I.
proximi, quos tenemur diligere sicut nos ipsos,⁴ et quod habemus omnes
unum⁵ communem Dominum, ante cuius tribunal tenemur rationem
reddere. Est enim ultimae immanitatis causas quaerere et gaudere quod
sint ad interficiendum et perdendum homines, quos Deus creavit et pro
quibus Christus mortuus est. Sed coactum et invitum venire oportet ad
necessitatem belli.

Secundus canon: Conflato iam ex iustis⁶ causis bello, oportet illud II.
gerere non ad perniciem gentis, contra quam bellandum est, sed ad conse-
467 cutionem⁷ iuris sui et defensionem patriae et Reipublicae suae, et ut ex⁸
illo bello pax aliquando et securitas consequatur.

Tertius canon: Parta victoria et confecto bello, oportet moderate et III.
cum modestia Christiana victoria uti et oportet victorem existimare se
iudicem sedere inter duas Respublicas—alteram, quae laesa est, alteram,
quae iniuriam fecit—ut, non tanquam accusator, sed tanquam iudex,
sententiam ferat, qua satisfaceri quidem possit Reipublicae laesae, sed
quantum fieri poterit, cum minima calamitate et malo Reipublicae no-
centis,⁹ castigatis nocentibus quantum licuerit; et maxime, quia, ut¹⁰ pluri-
mum, inter Christianos tota culpa est penes principes, nam subditi bona
fide pro principibus pugnant,¹¹ et est periniquum, quod poeta¹² ait, ut,

"quidquid delirant reges, plectantur⁷ Achivi."

¹S has the more Ciceronian *ut excusentur*, but see p. 205.

²M and S have *quanquam*, which M has corrected to *quemquam* in his Errata.

³V. 18: "Si fieri potest, quod ex vobis est, cum omnibus hominibus pacem habentes."

⁴Cf. *Matth.*, cap. 22, v. 39.

⁵S omits *unum*.

⁶B has *istis*.

⁷S has *consequentionem*.

⁸S omits *ut ex*.

⁹B inserts *et satis est ut*.

¹⁰M omits *ut*.

¹¹S has *pugnant*.

¹²HORACE, *Epistolae*, I, 2, 14.

¹³VICTORIA has adapted this from HORACE's *plectuntur*.

DE INDIS ET DE IVRE BELLI RELECTIONES

BEING PARTS OF

RELECTIONES THEOLOGICAE XII

BY FRANCISCUS DE VICTORIA

Primary Professor of Sacred Theology in the University of Salamanca

THE PHOTOGRAPHIC REPRODUCTION OF THE EDITION OF 1696

The *De Indis* and the *De iure belli* are the only lectures here reproduced out of the twelve *Relectiones* in the original volume, as they are the only ones which have a direct bearing on International Law. As a matter of historical interest, the Preface of the original volume is reproduced, although not essential for this publication. The Preface and the two *relectiones* follow immediately after this page and consist of twenty-four pages unnumbered in the original, and pages 302-467 of the numbered original.



FRANCISCI de VICTORIA

Theologi Hispani celeberrimi

RELECTIONES
MORALES

Duobus tomis comprehensæ,

Quarum seriem versa pagina in-
dicabit Antea Ingolstadii editæ nunc pro-
pter exemplarium defectum & rerum nobilitatem
recognitæ & duplice indice ornatae

Opera,

JOH. GEORGII SIMONIS,

J. U. D. Consilarii & Profess.

Hallensis.

Opus Omnibus tam Jure Consultis quam

Theologis imprimis utile:

os(o)so

COLONIÆ & FRANCOFURTI,
Sumptibus AUGUSTI BOETII

M DC XCVI

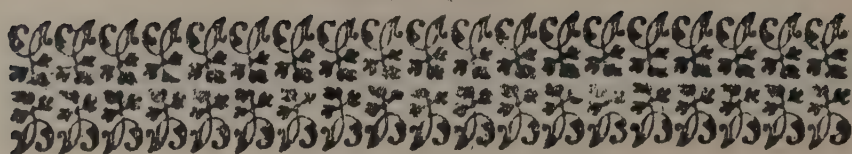


Tomus Primus.

- I. De potestate Ecclesiæ prior.
- II. De potestate Ecclesiæ posterior.
- III. De potestate Civili.
- IV. De potestate Papæ & Concilii.
- V. Pars prior, sive de Indis noviter repertis.
- VI. Pars posterior, sive de jure Belli.
- VII. De Matrimonio.

Tomus Secundus.

- IIIX. De augmento Charitatis.
- IX. De Temperantia.
- X. De Homicidio.
- XI. De Simonia.
- XII. De Arte Magica.
- XIII. De eo, ad quod tenetur homo veniens ad usum rationis.



QUIDAM EX INGOLSTAD-
DIANIS SS. THEOLOGIÆ DOCTO-
RIBUS CHRISTIANO
LECTORI S.

FRANCISCI VICTORIÆ
Theologi, patrum memoria in
florentissima Salmanticensium
Academia longè doctissimi, Rele-
ctiones has 13. Christiane Lector,
cùm hic INGOLSTADII re-
cudendæ essent, corrigendas suscepi virorum Docto-
rum suasis, qui tanti viri studio, propter ejus famæ
celebritatem vehementer incendebantur. In hoc au-
tem negotio, quod mihi datum est, pauca hæc esse vi-
deo, quorum rationem tibi constare operæ pretium
sit: quantum operæ & laboris in editione corri-
genda & adornanda posuerim; qualis quantusq; vir
hic fuerit, qui harum Relectionum autor est; quan-
tum utilitatis & commodi harum Relectionum le-
ctio adlatura sit hominibus etiam Germanis, qui à
gymnico illo & scolastico disputandi genere viden-
dentur nonnihil alieni.

Quantum autem laboris sit à nobis in hoc nego-

PRÆFATIO AD LECTOREM.

tio susceptum, credere vix. Lector poteris, nisi vel hanc editionem nostram cum Lugdunensi & Salmanticensi studiosè conferas, vel qualis utraque harum fuerit, nobis referentibus, ratione aliqua cognoscas. Usus enim eram primò sola Lugdunensi ad bonam prioris Tomi partem repurgandam, ex qua folia quinque prima typographus excudendo iam absoluerat, quando prater spem opinionemque meam Salmantinae editionis exemplum (non enim putabam in his locis extare) quod multò emendatius videbatur, hoc modio sum nactus. Cum reverendus Pater Gregorius Rosèphius Augustanus Ecclesiastes huc ad nos excurrisset, laboremque molestissimum, quem in exemplari Lugdunensi corrigendo (videbar siquidem Augiæ stabulum purgare) suscipiebam, locosque aliquot omnino deprauatos à me indicatos cognouisset, effecit gratia & intercessione sua, uti vir generosus D. Marcus Fuggerus, pro eo quo tenetur publici commodi desiderio, ex celeberrima illa familia sua Bibliotheca Salmantinum exemplar nobis utendum daret. Quam autem mendosum & corruptum Lugdunense fuerit exemplar, ex Epistola F. Alphonsi Mugnosii ad Lectorem, quam in initio Salmantini exempli posuit, malo, quàm ex me Lector intelligas. Cujus Epistola, quia laudes autoris etiam in ea continentur, & discipuli ejus doctissimi aliquot nomi-

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natim recensentur, partem aliquam huic interfere visum est. Cùm Salmanticæ agerem, auxiliaremque nauarem operam fratri Dominico Soto in emaculanda impressione quarti sententiarum, qui tunc excudebatur, candide Lector, libellus quidem prodiit speciosissimo titulo, innumerabiles portentosasque mendas, deliramenta pudenda, atque contumeliosa auctori, tum etiam toti Theologorum scholæ continens. Stuporierat in tantilli libelli corpusculo tam incredibilem vitiorum congestam intueri colluuiem, pudori atque dolori, quòd visebatur tantum licere nebulonibus in eximias clarissimorum virorum lucubrationes, idque impunè. Titulus libri is erat: Relectiones R. P. Fratris Francisci Victoriæ, ordinis Prædicatorum, sacrae Theologiæ in Salmanticensi Academia quondam primarii Professoris. Vides inscriptionem pulcherrimam, & undecunque pollicitabundam, atque adeò propter quam, vt Plinius dixit vadimonium deferi possit. Cùm igitur hunc librum Salmanticæ offendissem recens è prælo prodeuntem, summa auiditate cœpi legere, & vixdum conieceram oculos in pagellam, quæ prior sese obtulit, & ecce in oculos ipsos incurrit impius quidam error in materia Simonix, illeque mirum in modum stomachum

AD LECTOREM.

machum mihi mouit. Sed nihil moratus, cum res esset, quæ facile à quouis vel mediocriter erudito deprehendi posset; pergo, & quo amplius procedebam, plures errores, nonnullaque etiam truncata inueniebam. Cumque vidissem rem esse minimè ferendam, detuli ipsam ad reuerendos ad modum Patres F. Dominicum Sotum, & F. Melchiorum Canum, qui mihi autores fuerunt huius prouinciæ assumendæ; nempe librum istum corrigendi ad verissima exemplaria. Resciuit hoc ipsum Magister Franciscus Sanctius Salmanticensis Ecclesiæ Canonicus, & in Salmantino gymnasio cathedræ Philosophiæ moralis moderator, atque adeò administer sanctæ Inquisitionis in negotio examinandorum librorum, qui recipiendi sunt aut rejiciendi: Is ad F. Dominicum Sotum venit de hoc ipso cum eo tractaturus; ejusdemque Francisci impulsu accersitus sum, ac denuo ab ambobus ipsis sparta mihi hæc iniuncta est exornanda. Et quamuis nossem, quàm sit inamoenum negotium, quàm dura ac morosa res, quàm inglorius labor, corrigere atque instaurare monumenta aliena, præsertim tam vlcerosa, tam turbata vndique, tam miserè, poenè dixerim, & hostiliter habita, vt hæc ipsa erant: tamen autoritate præcipien-

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tum motus, tum etiam amore pulcherrimi operis, & illustris autoris ejusdemque charissimi mihi præceptoris mei Victorix adductus humeros amato operi supposui. *In fine denique ejusdem Epistola hanc Mugnosius adiicit clausulam:* Fruere igitur feliciter his, quæ tibi nostris vigilis & laboribus parauimus, quibus factum est (absit verbo inuidia) ut pro lutulento antea opere, ne dicam luteo, tersum nitidumque habeas, atque vndique aureum & splendidum, id quod facile experimento comperies, si quacunque liber apertus fuerit conferre volueris & perpendere, quid distet noster hic, quem tibi tradimus, qui correctus est à nobis, ab illo quem Jacobus Boyer excussit Lugduni Anno Domini 1557. ante quem nullus erat impressus: neque postea ausi sunt ulli typographi ipsum excudere, timentes hanc nostram, quantula ea cunque est, diligentiam, quam non ignorant. *Quàm igitur fuerit editio Lugdunensis vitiosa & corrupta, quantoque sit illa Salmanticensis (anni scilicet 1565.) emendatior, ex his, Lector, nobis tacentibus, agnoscis. Sed nescio quonam acciderit casu, ut in hanc Salmanticensem editionem tam tersam, tam nitidam, tam auream, nec pauca, nec leuia menda vitiaque obrepserint. Laborat nonnunquam eisdem*
vitiis,

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vitiis, quibus Lugdunensis, nonnunquam propriis, quae vel ex Lugdunensi, vel alia ratione aliqua corrigi fuerit necessum. Quid tunc agerem Lector tam mendoso etiam Salmanticensi exemplari, in quo corrigendi alterum spem mihi collocâram? transcriberem ne totum Salmanticense (cauerat enim vir ille generosus, qui nobis utendum dederat, typographo ne committeretur, nec ullis inficeretur notis) illudque typographo ad recudendum traderem? At id nec vacabat, ne si vacâisset, ad opus emendatè edendum fuisset utile, propter errata & vitia, quae in illud obrepissemus diximus. Corrigerem ne codicem Lugdunensem totum, sicut antè ex parte correxeram, antè quàm Salmantinum haberem, & correctum typographo praberem? nec id fieri poterat, quòd ille multò pluribus & grauioribus quàm hic corruptus esset vitiis; & quia, nisi illum ex Salmanticensi emendaremus, frustra hunc accepissè utendum videremur. Rem igitur ita constitui: A quo loco typographus excudendi opus intermiserat, (intermiserat enim casu post folium quintum, quod litera E notari solet) ab eo ipse & prudens socius, quem assumpseram, utrumque codicem contulimus accuratissimè, & Lugdunensem, qui typographo tradendus erat, ex Salmanticensi ubicunque hoc nullum habuisset apertum mendum, pro eo ac potui-

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mus, correximus. Vbi verò graue & apertum vitium in Salmanticensi occurrit (nam in leuioribus mendis tollendis meo iudicio putavi standum) Theologos & Philosophos peritissimos consului, ut communi multorum iudicio perpensis in utroque exemplari omnibus, & verbis, & sententiis auctoris, quæ ad ejus intelligendam mentem facere viderentur, vitium corrigeretur. Accidit nonnunquam, ut omnes simul, corrupti alicuius loci restituendi vix rationem aut modum ullum inueniremus. Qui fidem nobis non habet, is in utraque editione, vel locum vnum legat in Relect. de augmento Charitatis circa numerum 10. ex quo si certam auctoris sententiam eisdem verbis retentis eruerit, tunc demum nos mendacii aut inscitia arguat. Hac ergo ratione cum utramque editionem ad finem usque contulissemus, etiam quinque folia, quæ diximus fuisse typis excusa, studiosè ex Salmanticensi codice correximus, ne ad absolutam integramque totius operis expurgationem quippiam desideraretur. Errata quæ in his foliis inciderunt, quia in iis ipsis tollere nequiuimus, in fine inter errata reliqua notauimus. Magnus quidem & molestus hic labor, sed ille maior & molestior, quem suscepimus in toto opere iam ad Salmantinum codicem emendato, simpliciter omnique ex parte corrigendo, repurgando & scholiis illustrando.

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-do. Quæ res eo fuit operosior & difficilior, quò fuit utraque editio corruptior, & quò autor, propter acerrimi ingenii vires, quas more doctissimorum virorum, in res præsentès intendit, minùs videtur studiosus verborum, minùs memor ordinis, aut eorum, quæ in initio ad disputandum proposuit. Unde factum videtur, ut nonnunquam nimis concisa & scholastica videri possit uti oratione, nonnunquam ad argumenta nonnulla proposita non respondere; nonnunquam ad multa simul responsum unum reddere; nonnunquam dum questionem positam disputat, aut argumentum aliquod refutat, occurrentes questionès & dubia interserere; nonnunquam ex disputandis questionibus, quas in initio Relectionis proposuit (ut constat in Relectione de Matrimonio & Relectione de Temperantia) aliquas prorsus prætermittere. Nec hîc noster constitit labor, sed tertio totum opus iam typis excusum percurrere opus fuit, cum ad conficiendum indicem Alphabeticum, tum ad errata corrigenda, quadum perficere conamur, illud eâdem opera præstitimus, ut hujus nostræ editionis codicem unum, multo quàm fuerit iam editus emendatiorem reliquerimus, plurimis vitis & mendis, quæ vel postea inciderant, vel antea non occurrerant, sublatis; ex quibus pauca quiddem, sed tamen potiora inter errata in fine libri annotauimus.

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tauimus. Ex quibus, Lector, intelligis, non omnia errata in fine libri animaduersa, typographi vel incuria, vel inscitia accidisse, sed multa irrepsisse (præsertim in quinque foliis primis) quia careremus exempla Salmantino, vel propter utriusque editionis, qua vsi sumus deprauationem, vel etiam nostra caussa, qui omnia peruidere & pernoscere nequiuimus. Locos tamen non paucos, qui corrigi videbantur posse dedita opera reliquimus, tum quod eodem modo in utraque editione, vel certè in Salmantina extarent, tum ne quispiam nimiam licentiam in alieno opere corrigendo nobis obiiciat.

De autore harum Relectionum hoc tantum habeo compertum; vixisse illum Imperatore & Hispaniarum rege Carolo huius nominis quinto: Fuisse ordinis sancti Dominici; ejusdemque ordinis extitisse præclarum lumen & ornamentum. Floruisse maximè acerrimi ingenii, iudicii & solidæ doctrinæ laude, discipulorum doctissimorum (è quibus nonnulli ex editis libris notissimi sunt, ut Melchior Canus, Dominicus Sotus) multitudinè & gloria. Tantam præterea huius viri fuisse apud omnes auctoritatem, tantum nomen extitisse, ut auditoribus tanquam alterum Pythagoram representaret, ut à Theologis & Philosophis doctissimis, Theologorum & Philosophorum suæ memoriæ
alpha

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*alpha & princeps haberetur : ut I. Catholici Hispania reges causas ad ipsorum conscientiam at-
tinentes (quales fuerunt (1.) subactarum noui
orbis prouinciarum , & (2.) repudiatae vxoris à Rege Angliæ, de quibus in hoc opere dispu-
tatur) ad eum detulerint, ab eoque in his doceri
cum primis voluerint ; ut ipse hac ipsa, quam
non ignorabat, autoritate fretus de regum, atque
adeò summi Pontificis causis liberrimum, pro eo
ac conscientia ratio postularet, iudicium tulerit.
Hæc attentius considerans dubitare soleo, maiori
ne laude digna sit viri hujus certa quadam æppn-
cia auctoritatis & eruditionis eximie prædiis
munita, an ipsorum Regum Hispania, atque adeò
II. ipsius summi Pontificis singularis animi mode-
ratio & æquitatis veritatisque cognoscenda actu-
enda desiderium. Ex quo fit ut à viro hoc doctis-
simo obiurgari se tacitè reprehendique (cum do-
ctrina tradenda ratio postulata) æquis, imò liben-
tibus animis patiantur. Retinent enim sapien-
tissimi reges hi, quod rex alius scriptum reliquit.
Corripiet me iustus in misericordia, & incre-
pabit me : oleum autem peccatoris non im-
pinguet caput meum. Quapropter iniuria tra-
ducunt nostræ ætatis hæretici apud omnes mona-
chorum ordinem, eo nomine quod rudes & indocti
sint, & Pontificibus & Principibus adulentur. Hi
profectò*

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profectò si cum nostro Francisco Victoria conferantur, nec Theologorum nomine digni erunt, nec quicquam ad veritatem dicere aut scribere, sed omnia Principum auribus dare videbuntur.

Quantum autem Salmanticensis Academia, atque adeò Hispania huic viro debeat, idem Alphonsus Mugnosius in Epistola ad Sereniss. Hispaniarum Principem Carolum his verbis testatur: Multum debet Hispania tota huic præstantissimo viro, quoniam ipse pluribus nominibus demeritus est, illo præsertim, quòd cum Theologia apud Hispanos confusanea, puluerulenta, aut potius lutulenta, lacera, pannosa, muta, ac penè elinguis iaceret, huius solius ope claritati, nitori, candorique suo, puritati, ac dignitati, venustati, ornatui & integritati, veluti longo post liminio, restituta est. Testimonio sunt huius veritatis, non modò centuriæ, sed Yliades etiam discipulorum ejusdem, quos schola ipsius quoquouersum effudit.

Relectionis autem nomine, nè fortè ignotum id tibi Lector videatur, scito intelligi apud Salmantenses genus Theologicarum exercitationum, earum disputationum non admodum dissimile, quas maiorum nostrorum memoria in celeberrimis Academicis in usu fuisse, & quodlibeticas quæstiones vocatas

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vocatas esse compertum est. Quæ enim quæstiones, ex his quæ in quotidianis prælectionibus toto anno disputatæ essent, difficiliiores & utiliores videbantur, & in his relectionibus, in publico doctissimorum hominum cœtu, ita ab eodem doctore repetebantur, ut multò quàm antea accuratius deciderentur, & tanquam ultimam manum acciperent. Et quoniam hic autor illius memoria Theologorum, maximè apud Hispanos princeps citra controversiam fuit, intelligis quæcunque in his Relectionibus disputando constituta sunt, ea omnia doctissimi Theologi iudicio esse tanquam peritissimi aurificis statera examinata & ponderata: Et idcirco multò solidiora & firmitiora his iudicari debere, quæ ab huius memoria hæreticis, hominibus videlicet doctrina & iudicio carentibus, leui brachio disputantur.

Etsi autem videri possunt Relectiones hæ Hispanorum potius ingenii, quàm Germanorum accommodatæ, quòd illi gymnicum & concisum, his sedatum & oratorium Theologandi genus confitentur; attamen si & disputandi modum, & doctrinæ in eis traditæ fructus spectemus, multum Germanis adlatura videntur adiumenti & commodi. Si enim consideremus attentius à quo tempor falsarum opinionum & hæreseon fluctus Ecclesiæ nauim quaterere his in locis cæperunt, ab eo à

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plerisque omnibus (forte conuita hæreticorum in Philosophos & Scholæ Theologos metuentibus) Theologiam præsidis & armis scholæ Philosophicæ & Theologicæ nudatam, ad oratoriam esse, vel Grammaticam potiùs rationem reuocatam; eaq; de causa ab iis, ita manibus illotis ad sacras literas accedentibus, vel nihil maiores in illarum studiis progressus factos, quàm à Grammatico aut Rhetore ingenioso facti essent, vel ex inscitia exercitationisque disputandi, & iudicandi insolentia prauas opiniones, aut esse genitas, aut defensas in eam potissimum ducemur sententiam (in quam ductum se M. Tullius in re simili testatur) ut existimemus, doctrinam Theologicam sine eloquentia non multùm prodesse Christianæ Reipublicæ, eloquentiam verò sine doctrina nimium obesse plerunque, prodesse nunquam. Quare si quis (ut eiusdem M. Tulli verbis parùm immutatis utamur) omïssis rectissimis illis atq; certissimis studiis Theologia diuinæq; doctrinæ, consumit omnem operam in exercitatione dicendi aut scribendi, is inutilis sibi, perniciosus patriæ ciuïs, & matris Ecclesiæ parricida futurus alitur. Qui verò ita sese armat eloquentia, ut non oppugnare commodam patriæ Ecclesiæq; doctrinam, sed pro his propugnare possit, is nobis vir & suis & publicis rationibus utilissimus, amicissimus ciuïs, atque Ecclesiæ matris filius charissimus fore videtur. Hæc non
ideo

AD LECTOREM.

ideo Lector attuli, quòd putem in Theologia tradenda ratione vel Franciscum hunc Victoriam Hispanosque ceteros esse indisertos & infantes, vel Germanos esse doctrina solida vacuos & expertes (noui enim & hunc Victoriam in his Relectionibus, quantum res fert, eloquentem esse, ceterosque Hispanos praesertim cum ab scholae loquendi consuetudine discedere libet, disertè posse & dicere, & scribere; Germanos etiam non paucos Philosophiae & Theologiae doctrinis esse perfectè excultos) sed quòd existimem, optimè suis & patriae rationibus Germanos Theologos consulturos, si solidum illud & scholasticum theologandi genus, quale est huius Victoriae & communiter Hispanorum, cum sedato illo & oratorio, quod ipsi plerumque consecrantur, studiosè coniungant.

Fructus porrò harum Relectionum & vberes sunt & multiplices, quos poterunt, vel hi, qui aliorum Doctores sunt, vel reliqui omnes percipere. Id verò ex singulis Relectionibus possumus planum facere.

Cum enim in prima Relectione duplex potestas in Ecclesia distincta esse monstratur, Ecclesiastica & civilis, & illa hac potior ostenditur, falsum euertitur dogma Lutheranorum utramq; potestatem exequantium, vel Ecclesiasticam civili subiicientium.

In secunda, quae etiam inscribitur de potestate

PRÆFATIO

Ecclesiastica, duplex refutatur hæreticorum dogma; Vnum, potestatem propriè Ecclesiasticam & Spiritualem primò & per se inesse in tota Ecclesia uniuersali, ad eum modum, quo potestas ciuilis est in Republica Ciuili: Alterum; Christianos omnes esse Sacerdotes, omnes aequales; nullum esse ordinem, nullosque certos gradus Ecclesiasticæ potestatis.

Intertia potestatis ciuilis necessitas, origo atque vis, & autoritas ita constituitur & firmatur, ut perniciosum dogma Lutheri, quod perniciem innumera propemodum rusticorum multitudine attulit, per sese corruat.

Quarta disputationem continet pulcherrimam de potestate Papæ & Concilii, qua tametsi minùs videatur iis esse vsui, qui cum hæreticis pugnant, aut hæreticorum consuetudine afficiuntur, est tamen his ipsis utilis & fructuosa: Dum enim quàm latè pateat & summi Pontificis & Concilii generalis potestas explicatur, simul utrique summa potestas & autoritas, suo tamen modo asseritur: Summi autem Pontificis & Conciliorum autoritate stabilita, & apud Germanos præponderante, constat fore, ut & sectæ nulla apud eos propagentur, & Hæreses omnes, non secus ac tenebra lucente Sole, dissipantur.

Quinta, qua de Indis inscribitur (hoc est, de barbaris noui Orbis hominibus, quos vulgus Indos nominat)

AD LECTOREM.

minat) tametsi responsum esse aideri potest, Catholicis Hispania regibus ab autore redditum, multa tamen continet iis omnibus utilia & salutaria, qui in eadem vel simili, qua Reges illi caussa, esse possunt. Qualia sunt, quemadmodum dubitans de caussa aliqua ad conscientiam pertinente, consulere doctos & sapientes in eo genere debeat: quemadmodum, quod fuerit à sapientibus definitum, sequi, etiamsi illi, ut accidere potest, errarent: quàm multi esse possint tituli illegitimi, quàm multi legitimi, quibus exterarum prouincias aut homines Reges illi in suam potestatem redigere potuerint. His enim accuratè disputatis & constitutis, conscientia eorum, quorum interest, apertè docetur, quid in hac caussa cauendum sit, quid agendum.

In sexta, quæ est de Indis posterior, siue de iure belli, multæ eaque salutariæ traduntur documenta, quæ & à Regibus atque Principibus seruari oporteat, ut iustè bellum inferant aut gerant, & reliquis omnibus, ut iustè militare aut merere sub suo, aut alieno Principe valeant. Dogma interim illud hæreticorum refutatur: Non licere Christianis Principibus, vel cum aliis Christianis, vel cum Turcis bellare.

In septima, quæ videtur responsum auctoris ad causam illam Regina Angliæ à Rege Coniuge suo

PRÆFATIO.

repudiata, strenuè expugnatur dogma illud falsum Lutheranorum; omnes gradus, qui Levit. 18. & 20. vetiti sunt, etiam nunc vetari diuino iure. Malè praterea habet hæreticos, quòd in hac Rele-ctione firma ratione ostenditur; causas matrimo-niales iure, & meritò, ad Ecclesiasticos iudices de-ferri.

Octaua, in qua de augmento & decremento Cha-ritatis agitur, disputationem quidem continet ad scholas Theologorum potius, quàm ad concionem, aut alios homines pertinentem; attamen quæ ipsis Theologiis multùm adferat adiuuenti, cum ad inge-nium acuendum, tum ad rei pulcherrimæ vereque Theologicæ perceptionem. Possemus etiam illud addere; damnari hîc hæreticorum opinionem illam; omnes iustos esse Charitate & Gratia apud DEVM pares; nec vlla in re Sanctiss. Virginem CHRISTI matrem mulieri ulli de media plebe, Luthero assertore, antecellere.

Nona de Temperantia variam & incundam con-tinet disputationem, quaque hîc in locis propter con-trouersiam de alimentorum delectu, grata plerisque fore videatur; damnantur hîc barbari homines An-thropophagi, & qui homines Deo sacrificabant; de-fenduntur Carthusienses, qui carnibus perpetuò ab-stinent, & alii viri religiosi, qui alioqui videntur per abstinentiam vitæ spatium breuius efficere. Plu-

AD LECTOREM.

ra in hac Relezione contra hereticos præsidia haberemus, nisi autor Quæstionum in initio positarum unam aut alteram prorsus prætermisisset.

Decima, in qua de homicidio disputatur, multis modis utilis est; plura verò in ea definiuntur, quàm ut possint à nobis summatim comprehendì.

Vndecima disputationem de Simonia & Simoniacorum pœnis complectens, non utilis modò, sed etiam necessaria his in locis videri potest, ubi labes hac tam inveterata est, tamque latè serpsit, ut vix in vitio ponatur. Nec heretici ab hoc vitio liberi sunt, tametsi ab Ecclesiæ corpore præcisi.

Non minùs utilis ac necessaria est duodecima, in qua de Magia disputatur; auditione siquidem certa frequenter accepimus, quin imò certò scimus, post inuectum per Martinum Lutherum nouum Euangelium, eum esse consequutum statum in Septentrionis maximè prouinciis, ut doctrina CHRISTI sensim in mentibus hominum deficiente & occidente, Magia sensim ita conualuerit, ut, illa prorsus extincta, sola cum socia Haresi regnare videatur. Nec huius Magiæ, atque spiritus Pytho-nici expertes aut vacui omnino sunt Anabaptistæ & Calvinistæ, quin potiùs eum spiritum verbis, scriptis, moribus, facie, & oculis spirant.

In vltima Relezione argumentum tractatur homine Christiano dignissimum; ad quid nimirum

PRÆFATIO AD LECTOREM.

quique teneatur, quando primum ad usum rationis peruenit. Quid enim conuenientius ab homine, præsertim Christiano, doceri aut disci potest, quàm status vel modus ille, quo sese ad Deum finem videlicet ultimum summumq; bonum suum conuertat, cuius fruendi causa creatus est? Partes iam tuæ, Christiane Lector, eæ sunt, ut opus hoc, in quo emendando nos tantum opera temporis que posuimus; quod à tali tantoque Theologo elucubratum est; quod doctrinam continet tam certam & solidam, tam utilem & necessariam, grato & libenti animo suscipere, tuæque studia eius lectione & meditatione ad altissimarum rerum cognitionem excitare. Nobis abundè satisfactum erit, si huius tu lectione, & doctior, & meliore euadas. Vale. INGOLSTADII, ipso die S. Laurentii Martyris, Anno 1580.

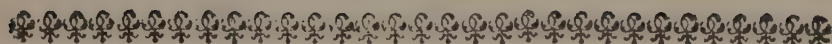


CARMEN IN LAUDEM OPERIS AD LECTOREM

incerto autore.

*Continet exiguus liber hic quàm plurima, Lector
Leges, Pontifices, Theologosque sacros.*

ALIVD



ALIVD
CARMEN EXTEMPORA-
NEVM MATERIAM VTRIVSQUE
TOMI QVAM BREVISSIME
COMPREHENDENS.

QUID veneranda queat docet hic Ecclesia
mater

Pontificesque liber : Patrum quæ ritè potestas
Concilio in magno : simul & ciuilia iura,
Et quæ sint belli : neque enim Mars legibus orbis :
Legitimumque thorum atque hominum connubia
tractat.

Hac Franciscæ tui Victoria prima laboris
Est pars : & tanti stat adhuc quoque gratia facti.

Quis pietatis amor, quàm sit pulcherima virtus
Abstînuisse bonis, & legem ponere luxus.
Quanta sed impietas, humano sanguine dextram
Polluere, & vitam, quæ nec reparabilis auro,
Nec precibus amissâ semel, preciouè benigno,
Eripere ! hea sîlicem gerat is sub pectore duram,
In sua qui diro grassatur viscera ferro.
Nec precio pia præbendas Ecclesiæ vendit,
Sed gratis bene dat meritis, animosque repellit
Degeneres, nec sîet Magicis res artibus ulla,

*Artibus èx uni reuocatis carcere abyssi.
His quoque, cum verum ventum est rationis ad
vsum,*

*Quid fieri deceat, supremo in limine libri
Edocet aeterna dignus Victoria vita.
Nec tua pertenuis tam magni gratia facti,
Et tenebris, turpique situ qui promissum Edere
Tanti scripta viri: quòd si DEVS annuet ausis,
Æternum viues, post funera debita viues,
Et DEVS exemptam cælo de corpore mentem
Inferet æthereo, Diuosq; videberis inter:
Macte modo meritis, nec duro parce labori.*



REVERENDI PA-
TRIS, FRATRIS FRAN-
CISCI AVICTORIA DE INDIS
recenter inventis.

RELECTIO PRIOR.

Locus relegendus est ex Matth.
Docete omnes gentes, baptizan-
tes eos in nomine Patris, & Filii,
& Spiritus sancti, ultimo cap.

SECTIONIS PRIMÆ

SUMMA.

1. *Dubius in rebus, ut sit tutus in conscientia, quomodo debeat consulere illos, ad quos spectat hæc docere.*
2. *Dubius in rebus, post consultationem rei dubiæ debet sequi id, quod diffinitum fuerit à sapientibus, aliàs non erit tutus.*
3. *Dubius in rebus, si post consultationem rei dubiæ diffinitur à sapientibus, illud esse licitū,*

*tum, quod aliàs est illicitum, ut sit tutus in
in conscientia, an debeat sequi sententiam
illorum.*

4. *Indi barbari utrum essent veri domini
ante adventum Hispanorum privatim, &
publice. Et utrum essent inter eos aliqui
veri principes, & domini aliorum.*
5. *Error quorundã recensetur, qui dicebant,
nullũ in peccato mortali existentem habere
dominiũ in quacunque re.*
6. *Peccatum mortale non impedit dominium
civile & verum dominium.*
7. *Dominiũ utrum perdatur ratione infideli-
tatis.*
8. *Hereticus jure Divino non amittit domini-
um bonorum suorum, ob heresim com-
missam.*
9. *Hereticus an de jure humano perdat do-
minium bonorum suorum.*
10. *Hereticus à die cõmissi criminis incurrit
pœnam confiscationis bonorum.*
11. *Hereticorum bona non licet fisco occupare
ante condemnationem, quamvis de crimine,
constet.*

12. *Condemnatione facta etiam post mortem heretici, retro agitur bonorum confiscatio ad tempus commissi criminis, ad quamcunque pervenerint potestatem.*
13. *Heretici venditiones, donationes, & omnis alia alienatio bonorum, à die commissi criminis sunt invalida, &c.*
14. *An hereticus sit dominus bonorum suorum in foro conscientie, antequam condemnatur.*
15. *Hereticus licitè potest vivere ex bonis suis.*
16. *Hereticus, titulo gratuito potest transferre bona sua, putà donando.*
17. *Heretico non licet titulo oneroso putà vendendo, aut dando in dotem, bona sua transferre, si crimen posset venire in iudicium.*
18. *Hereticus in quo casu etiam titulo oneroso posset bona sua licitè alienare.*
19. *Barbari, nec propter peccata alia mortalia nec propter peccatum infidelitatis impendiuntur, quin sint veri domini, tam publicè quam privatim.*
20. *Dominii ut quis sit capax, an usus rationis requiratur.*
21. *Puer an possit esse dominus ante usum rationis.*

22. *Ament an possit esse dominus.*
 23. *Barbari amentiae prae-textu non impediuntur esse veri domini, cum non sint amentes.*
 24. *Indi barbari antequam Hispani ad illos venissent, erant veri domini, & publicè, & privatim.*



Ocete omnes Gentes, baptizantes eos in nomine Patris & Filii, & Spiritus sancti. Matthæi ultimo. In quem locum movetur quæstio, An liceat baptizare filios infidelium invitis parentibus. Quæ quæstio tractatur à Doctore, 4 Sententiarum distinction. 4. & a Sancto Thom. secunda secundæ quæstion. 10. artic. 12. & 3. parte quæst. 68. artic. 10. Et tota disputatio & relectio suscepta est propter barbaros istos novi orbis, quos Indos vulgò vocant, qui ante quadraginta annos venerunt in potestatem Hispanorum, ignoti prius nostro orbi. Circa quos præsens disputatio habebit tres partes. In prima tractabitur quo jure venerint barbari in ditionem Hispanorum. In secunda, quid possint Hispaniarum principes erga illos in temporalibus & in civilibus. *hæc tripar*

Intertia, quid possint vel ipsi, vel vel Ecclesia erga illos in spiritualibus, & in spectantibus ad religionem. Ubi respondetur ad quæstionem propositam.

An disputatio hæc tota sit inutilis.

Quo ad primum partem, ante omnia videtur, quòd tota hæc disputatio sit inutilis & otiosa, non solum inter nos, ad quos non spectat, aut si omnia rectè geruntur in administratione illorum hominum disputare, aut dubitare de illo negotio, aut si quicquam forte peccatur, illud emendare; sed etiam apud eos; quorum interest hæc considerare & administrare. Primò, quia neque principes Hispaniarum, neque qui eorum Consiliis præpositi sunt tenentur de integro examinare & retractare jura, & titulos, de quibus alià deliberatum est & decretum, maxime in his, quæ bona fide principes occupant, & sunt in pacifica possessione. Quia, ut Aristot. dicit. 3. Ethico. si semper quispiam consultaverit, in infinitum res abiret, neque possent principes & eorum Consilarii esse securi & certi in conscientia sua; & si oporteret à primordio repetere titulos suæ ditionis, nihil exploratum possent tenere. Et præterea cum principes nostri scilicet Ferdinandus, & Isabella, qui primi oc-
cu-

cupaverunt regiones illas, fuèrint Christianissimi & imperator Carolus quintus sit princeps justissimus & religiosissimus: non est credendum, quin habeant exploratissima & exquisitissima omnia quæ spectare possunt ad securitatem sui status, & conscientiae maximè in tanta re: atque adeò non solum super vacaneum, sed etiam temerarium videri potest de his disputare: & hoc videtur esse quærere nodum in scyrpo, & iniquitatem in domo justi.

Pro solutione hujus objectionis est considerandum, quòd Aristot. dicit tertio Ethicor. quòd sicut consultatio & deliberatio non est de rebus impossibilibus, aut necessariis; ita nec consultatio moralis est de illicitis, de quibus certum & notum est esse licita, & honesta: neque econtrario, de quibus certum est esse illicita, & inhonesta. Neque enim quisquam rectè consultaverit, an temperare, fortiter, justè vivendum sit, vel injustè, aut turpiter agendum, neque an adulterandum, an pejerandum, an colendi parentes, & cætera hujusmodi. Certè non effiet consultatio Christiana: sed cum aliquid agendum proponitur de quo dubitari meritò potest, an sit rectum vel pravum, justum aut injustum, de his expedit consul-

*Respon-
sum auto-
ris proli-
xum.*

*Quæ ca-
dant sub
consulta-
tionem.*

tare, & deliberare, neque priùs temerè aliquid agere, quàm sit inventum & exploratū, quid liceat, aut non liceat. Talia sunt quæ in utranque partem habent speciẽ boni aut mali, qualia sunt multa genera comutatio-

In dubiis nū & contractuum & negotiorum. Et in his nihil agere omnibus ita res se habet, quod si quis antedum quo quā de liberaverit, & legitimè illi constitutusque contrahit tale factum licitum esse, aliquid tale fecerit, & fortè secundum se esset licitum: tamen quid liceat: ille peccaret, neque excusaretur per ignorantiam: cum illa, ut patet, non esset invincibilis, postquam ille non facit quod in se est, cat.

ad examinandum quid liceat, aut non liceat. Ad hoc enim, ut actus sit bonus, oportet, si aliàs non est certum, ut fiat secundū definitionem & determinationem sapientis. Hæc enim est una conditio boni actus, 2. Ethic. ut fiat secundem definitionem sapientis. atque adeò si iste non consuluit sapientes in re dubia, excusati non potest. Imò dato quod talis actus secundum se licitus esset, postquam dubitatur, meritò de illo tenetur quilibet consultare, & arbitrio sapientum facere, etiamsi fortè illi errarent.

Consulendum. Unde si quis contractum, de quo inter ho-

homines dubitatur an sit licitus nec ne, *fa di sapien-*
 ceret sine Concilio Doctorum. sine dubio *tes intelli-*
 peccaret, etiamsi aliàs contractus esset *jici-gas quid*
 tus, & ipse ita putaret, non ex autoritate *sa-in his lice-*
 pientis, sed ex sua affectione, & sententia *at, ex co-*
 Eadã ratione si quis in re dubia consulit *sa-rumque*
 pientes & illi determinaverint illud non *li. arbitrio*
 cere; si talis proprio judicio faceret aliquod *agendum,*
 talè, peccaret, etiamsi aliàs illud in se esset
 licitum. Ut si quis, exempli gratia esset du-
 bius, an hæc sit uxor sua, consultat, an tenea-
 tur reddere debitum, vel utrum liceat, vel
 etiam exigere: respondetur à Doctoribus
 quod nullo modo licet, ipse autem ex affectu
 uxoris vel propria cupiditate, non credit,
 sed putat sibi licere, certè peccaret accedens
 ad uxorem, quamvis de se licitum esset, si-
 cut revera est. quia talis facit contra con-
 scientiam, quam tenetur habere. Tenetur
 enim credere in his quæ spectant ad salu-
 tem his, quos Ecclesia posuit ad docen-
 dum: & in re dubia arbitrium illorum est
 lex. Sicut enim in foro contentioso judex
 tenetur judicare, secundum allegata & pro-
 bata: ita in foro conscientie quilibet tene-
 tur judicare, nō ex proprio sensu, sed vel per
 rationem probabilem, vel per autoritatē sa-
 pientium.

*Qui in hu-
 jusmodi
 ambis in-
 consultis
 sapienti-
 bus ali-
 quid agit.
 peccat, ta-
 met si quod
 agit alio-
 quilibet*

piendum, alias est temerarium iudicium, & exponit se periculo errandi, & hoc ipso errat. Sicut in veteri testamento Deuter. 17. præcipiebatur, Si quid erit ambiguum inter sanguinem & sanguinem, causam & causam, lepram & non lepram & iudicium ait Dominus intra portas tuas videris variare: fugre, & ascende ad lacum, quem elegerit Dominus DEUS tuus, veniensque ad sacerdotes Levitici generis, & ad iudices, qui furrunt in illo tempore, quæ resque ab eis, qui indicabunt tibi iudicium veritatis & facies quodcumque dixerint qui præsumunt loco, sequerisque sententiam eorum, neque declinabis ad dextram neque ad sinistram. Ita inquam in rebus dubiis tenetur quilibet consulere illos, quos Ecclesia ad hoc constituit, quales sunt Prælati, prædicatores, confessores, divinæ & humanæ legis periti. Sunt enim in Ecclesia alii oculi, alii pedes, &c. r. ad Corinth. 12. Et Ephes. 4. & , ipse dedit quidem quosdam Apostolos, alios Evangelistas, alios autem pastores & Doctores: Et, Super cathedram Moysi sederunt Scribæ & Pharisei, omnia quæcumque dixerint vobis, servate & facite. Matth. 23. Et facit etiam præceptum Arist. 2. Ethic. ex Hesiodo.

*Atqui ex se nescit, cuiquam neque porrigit
aures,*

*Ut bona percipiat, demens & inutilis
ille est.*

Itaque non satis est ad securitatem vitæ
& conscientiæ, ut quis putat se bene agere:
sed in rebus dubiis necesse est ut aliorum,
ad quos spectat, auctoritati nitatur. Nec
enim negotiatoribus satis est ut nihil faci- *Adver-*
ant, quod ipsi illicitum putent, si aliâs sine *tant hoc*
Concilio peritorum illicitos contractus *negotiato-*
faciant. Unde non puto verum, quod *res.*
Cardin. Cajet. dicit, quod si revera aliquid
secundum se est licitum, si veniat in dubium *Cajetanus*
licet quicunque prædicatores, aut confesso- *reprehen-*
res, qui aliâs habent auctoritatem judicandi *ditur.*
in istis, dicant illud esse illicitum, vel veniale
dicant esse mortale: quod qui ex affectu ad
rem non credit illis, sed format sibi conscien-
tiam, quod non sit mortale, non peccat.
Exemplum ponit, ut quod foeminae utantur
fuco, & aliis ornamentis superfluis, quod
re vera non est mortale, dato quod prædica-
tores confessores dicerent esse mortale. Si
foemina ex studio se ornandi non credit, sed
putat vel esse licitum, vel non esse mortale,

non peccat mortaliter ita se ornando. Hoc
Adverta- inquam periculosum est. Nam fœmina tene-
ti hoc fœ- tur credere in his, quæ sunt necessaria ad
mine. salutem, peritis, & exponit se periculo fa-
Consilium ciens contra illud, quod secundum senten-
sapientum tiam sapientum est mortale. Et e contrario
sequens tu in re dubia si quis delibaverit cum sapienti-
tus in con- bus & accepit determinationem, quod illud
scientia, est licitum; talis est tutus in conscientia
quousque quousque fortasse iterum sit admonitus, vel
non habet tali autoritate, vel hujusmodi rationibus,
rationem quibus meritò debeat moveri ad dubitan-
dubitandi dum, vel etiam credendum contrarium, hoc
aut creden- est notum, quia facit quod in se est, & sic
 ignorantia est invincibilis.

di contra- Ex his ergo conficiuntur propositiones.
rium. Prima in (1) rebus dubiis quilibet tenetur

1. *Prop.* consulere illos, ad quos spectat hæc docere,
Tres pro- aliàs non est tutus in conscientia, si ve illa
positiones dubia sint de re in se licita, si ve illicita.

colligun- Secunda, Si (2) post consultationem rei
tur ex di- dubiæ diffinitum sit à sapientibus, illud esse
His. illicitum, quilibet tenetur sequi sententiam

2. *Prop.* illorum, & contrarium faciens non excusa-
 tur, etiam si aliàs illud esset licitum.

3. *Prop.* Tertia e contrario, (3) Si post consultatio-
 nem rei dubiæ diffinitum sit a sapientibus
 illud

illud esse licitum, qui sequitur sententiam illorum, est tutus, etiam si aliâs sit illicitum.

Ergo redeundo ad propositum negotium barbarorum, nec est de se ita evidenter injustum, ut non possit disputari de justitia illius: nec rursus ita evidenter justum, ut dubitari non possit de injustitia illius: sed in utraque partem videtur habere speciem. Nam primum cum videamus totum illud negotium administrari per viros, & doctos, & bonos, credibile est rectè & justè omnia tractari. Deinde cum audiamus tot hominum cædes, tot spolia hominum alioqui innoxiorum, deturbatos tot dominos possessionibus, & ditionibus suis privatos, dubitari merito potest jure an injuria hæc facta sint: & sic hæc disputatio non videtur omnino supervacanea, & per hoc patet responsio ad objectionem. Et præterea, dato quod nullum esset dubium in tota hac quæstione, non est novum disputationes Theologicas institui de re certa. Nam & disputamus de incarnatione Domini, & aliis articulis fidei. Non enim semper disputationes Theologicæ sunt in genere deliberatio. Sed pleræque ingenere demonstrativo, id est non ad consultandum, sed ad docendum susceptæ.

Occurrit Quod si quis occurrat dicens, Licet ali-
Objectioni quando fuerint aliqua dubia circa hoc ne-
primò. gotium, fuerunt tamen jam hæc tractata &

diffinita à sapientibus, & sic ex Concilio eo-
 rum jam omnia administrari, nec opus esse
 nova examinatione: respondetur primùm,
 si ita est benedictus DEUS, nec nostra di-
 sputatio quicquam obstat, neque ego mo-

II. vere volo novas querelas. Secundò di-
 co, quòd hæc determinatio non spectat ad

Hujus jurisconsultos, vel saltem non ad solos illos.
causæ de- Quia cum illi barbari, ut statim dicam, non
cisio. non essent subiecti jure humano, res illorum
ad juris non sunt examinandæ per leges humanas,
per viros sed sed divinas, quarum juristæ non satis peri-
ad Theolo- ti, ut per se possint hujusmodi quæstiones
gos perti- diffinire. Nec satis scio, an unquam ad di-
net. sputationem & determinationem hujus-

quæstiones vocati fuerunt Theologi digni,
Atque a- qui audiri de tanta re possent. Et cum aga-
deò ad sa- tur de foro conscientix, hoc spectat ad sa-
cerdotes id cerdotes, id est ad Ecclesiam, diffinire.
est ad Ec- Unde Deuteronomio 17. Præcipitur Regi, ut acci-
clesiam, at exemplar legis de manu sacerdotis. Ter-

III. tiò us summa rei sit satis examinata & certa,
 nonne in tanto negotio possunt alia pe-
 culiaria dubia occurrere, quæ meritò di-
 putari possent? Itaque non solum non otio-
 sum

sum aliquod, & in utile, sed magnum operæ pretium me facturum putarem, si hanc quæstionem pro dignitate possem tractare.

Redeundo ergo ad quæstionem, ut exor- *Prima*
dine procedamus, quæritur (4) primò u- *questio de*
trum barbari isti essent veri Domini ante *indis.*

adventum Hispanorum, & privatim & publicè: id est, utrum essent veri Domini privatarum rerum & possessionum, & utrum essent inter eos aliqui veri principes, & Domini aliorum. Et posset videri quòd non.

Quia servi non habent dominium rerum: servus enim nihil suum habere potest. Institut.

per quas perso. nob. acquirere licet. §. *item vobis.* & ff. de acquirend. hæ- *Argum.*

red. l. *pluced.* unde quicquod acquirit, Domino acquirit. instit. de his qui sunt sui, vel *pro parte*

alie. jur. §. *nam, apud omnes.* sed barbari *negat.*

isti sunt servi, ergo Probatur. nam ut Aristot, l. Politic. eleganter & accuratè tradit,

aliqui sunt natura servi, quibus scilicet melius est servire, quàm imperare. ii,

autem sunt quibus ratio non sufficit ad regendum etiam seipso, sed solum ad jussa cape-

ssandum, & quorum vis magis in corpore est quàm in animo. Sed profectò si ali-

qui tales sunt maximè isti barbari, qui re vera parum distare videntur à brutis ani-

man-

mantibus, & omnino ſunt inhabiles ad regendum: ſine dubio melius eſt illis, ut regantur ab aliis, quàm ut ſe ipſos regant. Et Ariſto. dicit juſtum naturale eſſe, ut tales ſerviant. ergo tales non poſſunt eſſe Domini. Nec obſtat, quod ante adventum Hiſpanorum non haberent alios Dominos: non enim repugnant, ſervum eſſe ſine Domino. ut notat glo. in l. *ſi uſum fructum*. ff. de liberati. Imo habetur expreſſè in ipſa lege, & eſt caſus expreſſus in l. *quod ſervus*. de ſervo. ſtipula. de ſervo, qui a Domino relictus eſt, & a nullo occupatus; quod poſteſt a quocunque occupari. ſi ergo erant ſervi, potuerunt ab Hiſpanis occupari.

*Arg. pro
part. af-
firm.*

In contrarium eſt, Quia illi erant in pacifica poſſeſſione rerum, & publicè, & privatim: ergo omnino (niſi contrarium conſtet) habendi ſunt pro dominis, neque indicta cauſa poſſeſſione deturbandi.

Pro ſolutione nolo revocare in propoſi-
Et diſtinctione. tum multa, quæ a Doctoribus traduntur de diſſinitione domini, quæ à me etiam latè adducta ſunt in materia de reſtitutione, 4. diſtinct. 15. & 1. 2. q. 62 Illa inquam prætereo, ne occasione illorum omittam
magis

magis necessaria. Et ideo his prætermis-
 notandum, quod si barbari non haberent
 dominium, non videtur quod possit præten-
 dialia causa, nisi vel quia sunt peccatores,
 vel quia infideles, vel quia amentes, vel in-
 sensati.

*Si barbari
 non habue-
 rint ve-
 rum domi-
 nium quot*

Fuerunt ergo aliqui, (5) qui defendebant,
 quod titulus domini est gratia, & per con-
 sequens quod peccatores, saltem in mortali
 peccato nullum habent dominium in qua-
 cunque re. Iste fuit error pauperum de
 Lugduno, sive UValdensium, & postea Jo-
 hannis VVicleff. Cujus unus error dam-
 natus in Concilio Constantien. fuit, Nullus
 est dominus civilis, dum est in peccato mortali.
 Eadem fuit sententia Armachani lib. 10 de
 quaestio Arme c. 4: & in dialogo. Defenso-
 rium pacis. Adversus quem scripsit VVald.
 To. 1. de antiq. lib. 3. c. 81. & 83. To. 2. c. 3.
 Probat Armach. quia tale dominium repro-
 batur à DEO. Osee. 8. *Ipsi regnaverunt,*

*causæ pos-
 sint præten-
 di amitten-
 di domini*

*Error Val-
 densium*

Wicleff, &

*Armacha-
 ni circa*

prunam

causam,

*hoc est pec-
 catum.*

& non ex me principes extiterunt, & non co- Pro senten-
 gnovi. Et subjungitur causa; *Argentum tiam Arma-*
& aurum suum fecerunt sibi idola, ut interri chani &
rent, &c. Et ideo, inquit, tales carent iusto prædicto-
 dominio apud DEUM. Certum est tamen *Arg. 1.*
 omne dominium esse autoritate divina, cum
 ipse DEUS sit creator omnium, neque ali-
 quis possit habere dominium, nisi cui ipse de-

- dederit. Non est autem consentaneum, ut det in obedientibus, & transgressoribus præceptorum suorum: sicut & principes humani non dant sua bona, ut villas, aut castra rebellibus, & si dederint auferunt. Per humana verò debemus judicare de divinis, Rom. 1. ergo DEUS non concedit dominium inobedientibus. Unde in signum huius, DEUS aliquando tales projicit à principatu, ut Saulem. 1. R. 15. & 16. & de Nabuchodonosor. & Balthasar, Daniel. 4. & 5. Item Genes. 1. *faciamus hominem ad imaginem & similitudinem nostram ut præsit piscibus maris, &c.* Apparet ergo quòd dominium fundetur in imagine DEI, sed hæc non est in peccatore: ergo non est dominus.
- II. Item talis committit crimen læsæ majestatis: ergo meretur perdere dominium. Item August. dicit, quòd peccator non est dignus pane, quo vescitur. Item Dominus dederat primis parentibus dominium paradisi, & ratione peccati privavit eos illo Gen. 1. ergo.
- III.
- IV.

Verum est, quòd tam Uvicleff, quàm Armachanus non distinctè loquuntur, & videntur potius loqui de dominio superioritatis, quod est principum. Sed quia argu-

gumenta æqualiter procedunt de omni dominio, ideo videntur sentire de omni dominio generaliter. & ita intelligit illorum sententiam Conradus, libro 1. q. 7. & satis clarè dicit Armachanus. Qui ergo sequeretur hanc sententiam, posset dicere, quòd barbari non habebant dominium, quia semper erant in peccato mortali.

Respondet

Sed contra hanc sententiam ponitur pro-*Autor hac*
positio, Peccatum (5) mortale non impedit *propositio.*
dominium civile, & verum dominium. *ut.*

Hæc præpositio licet sit determinata in Concilio Constantiæ, tamen arguit Almain. 4. *Almaini*
distin. 17. q. 2. ex Aliaco, quia tunc existens *ratio pro*
in peccato mortali, & constitutus in extrema *ponitur* &
necessitate esset perplexus, quia tenetur *reijcitur.*
medere panem: & si non habet dominium,
accipit alienum. ergo non potest evadere
mortale. Sed hoc argumentum parum procedit; primum, quia neque Armachanus, neque VVicleff videntur loqui de dominio naturali, sed civili. Secundò negatur consequentia, & diceretur, quòd in casu necessitatis posset alienum accipere. Tertio, Non est perplexus, quia *Ratio sive*
potest pœnitere & ideo aliter arguitur *Probatio*
mo, Quia si peccator non habet dominium. *authoris, l. 2.*
civi-

- civile, de quo videntur loqui, ergo nec naturale, consequens est falsum, ergo. Probo consequentiam, Quia etiam dominium naturale est ex dono DEI, sicut civile: imo plus, quia civile videtur esse de iure humano, ergo si propter offensam DEI homo perderet dominium civile, eadem ratione perderet etiam dominium naturale. Falsitas autem consequentis probatur, Quia non perdit dominium super proprios actus, & super propria membra. habet enim peccator jus defendendi propriam vitam.
- II. Secundo, Scriptura sacra saepe nominat reges illos, qui mali erant & peccatores; ut patet de Salomone, Achob, & aliis multis: non est autem rex, qui non est Dominus: ergo.
- III. Tertio converto argumentum factum pro parte contraria, dominium fundatur in imagine DEI: sed homo est imago DEI per naturam, scilicet per potentias rationales, ergo non perditur per peccatum mortale.
- IV. Minor probatur ex Augusti, libro 9. de Trini & ex Doctoribus Quarto, David vocabat Saulem dominum suum & regem, tempore quo persequabatur eum. 1. Reg. 16. & aliis locis. imo ipse David aliquando peccavit, nec propterea perdidit regnum.
- V. Quinto, Genes. 49. *Non auferetur sceptrum*

*ptum de Iuda, nec Dux de femore ejus donec veniat, qui mittendus est, &c. & tamen multi fuerunt mali reges, ergo. Sextò, Potestas spiritualis non perditur per peccatum mortale. ergo nec civilis, quia multò minus videtur fundari in gratia, quàm spiritualis. Antecedens autem patet, quia bresbyter malus consecrat Eucharistiam, & malus Episcopus sacerdotes; ut certum est: licet VVicleff neget, concedit tamen Armachanus. Septimò, Nullo modo est verisimile, cùm sit præceptum obedire principibus, ad Rom 13. & 1. P. 2. *Obedite præpositis vestris non tantum bonis, sed etiam discolis* & non capere alienum, quòd voluerit DEUS quòd esset ita incertum, qui essent veri principes, & domini. Et in summa, hæc est manifesta hæresis: & sicut DEUS solem suum oriri facit super bonos & malos, & pluit super justos & injustos: ita bona temporalia dedit bonis & malis, nec disputatur eò quòd dubitetur, sed ut crimine ab uno, id est, à tam amanti hæresi discamus omnes hæreticos.*

VI.

VII.

IIX.

Sed restat, utrum (7) saltem ratione infidelitatis perdatur dominium. Et vi- *Agitur jam de se-*
X de-

cunda detur quòd sic; quia hæretici non ha-
caussa a- bent dominium: ergo nec alii infideles,
mittendi quia non videntur esse melioris condi-
dominii. tionis. Antecedens autem patet ex c.
Et est que cùm secundum. de hæret lib. 6. ubi cave-
stio, An tur, quòd bona hæreticorum ipso jure
ratione sint confiscata. Respondeo per pro-
infidelita- positiones. Prima, Infidelitas non est
is amittit impedimentum, quo minus ali-
tur domi- quis sit verus dominus. Hæc conclusio
nium. Re-est S. Thom. secunda secundæ, q. 10.
sspondet auart. 12. Et probatur etiã primò. Quia
tor ali- scriptura vocat reges aliquos in fideles;
quot pro- ut Senacherib, & Pharaonem, & multos
positioni- alios reges. Item quia gravius Pecca-
bus Pri- tum est odium DEI, quàm infidelitas,
ma Prop. sed per odium, &c. Item Paul. ad Ro-
Probatur ma. 13 & 1. Pet. 2. jubent præstare obe-
ex Scrip, dientiam, principibus, qui tunc erant
 omnes infideles, & servos obedire do-
 minis. Item Tobias jubebat reddi hæ-
 dum à Gentilibus captum tanquam fur-
 tivum, Tob. 2. quod non esset, si Gen-
 tiles non haberent dominium. Item Jo-
 seph fecit totam terram Ægypti tributa-
 riam Pharoni, qui erat infidelis, Genes.
Probatur 47. Item ratione S. Tho. Quia infide-
ratione, litas non tollit nec jus naturale, nec hu-
 manum,

manum, sed dominia sunt vel de jure naturali, aut humano. ergo non tolluntur dominia per defectum fidei. Et tandem iste est ita manifestus error, sicut præcedens. Ex quo patet, quòd nec à Saracenis, nec à Iudæis vel aliis infidelibus licet capere res, quas possident, per se loquendo, id est quia infide- *Corollari-*
les sunt: sed est furtum, vel rapina, nonum.
minus quàm a Christianis.

Sed (8) quia peculiaris difficultas est de hæresi, sit secunda propositio, Stando in jure divino, hæreticus non amittit dominium bonorum, hæc est omni-² *Prop.*
um, & est nota. Cum enim amissio bonorum sit pœna, & nulla sit pœna de lege divina pro isto statu, constat stando in jure divino non amitti bona propter hæresim. Item patet hæc propositio ex prima. Nam si propter aliam infidelitatem non perditur dominium. ergo nec propter hæresim, cùm nihil sit cautum specialiter de hæresi, quantum ad hoc in jure divino.

Sed (9) utrum de jure humano? Conradus quidem libr. 1. q. 7. con. 1. & 3.

videtur tenere quòd hæreticus ipso facto perdit dominium bonorum suorum: ita quòd in foro conscientiz cadit à dominio. Ex quo infert, quòd non potest alienare, & alienatio non tenet, si fiat. Probatur ex illo *c. cum secundum leges*. ubi Papa præmittit, quòd propter aliqua crimina secundum leges, eo ipso suarum rerum dominium autores delictorum perdunt. & Papa determinat, quòd idem sit pro crimine hæresis. & idem videtur tenere Johan. Andr. in d. *c. cum secundum*. & videtur haberi ex l. 4. C. de hæret. ubi interdicitur hæreticis venditio, & donatio, & omnis contractus bonorum suorum. Item leges obligant in foro conscientiz, ut docet S. Tho. prima secundæ, q. 96. artic. 4.

Prop. 3. Sed pro declaratione sit Tertia propositio; Hæreticus (10) a die commissi criminis incurrit confiscationem bonorum. Ita tenent communiter Doctores, & est determinatio Directo libr. 3. titulo 9. & in summa Baptistana in verbo absol. §. 17. & videtur diffinitum in illo. *c. cum secundum leges*; & in d. l. 4. C. de hæret.

Quar-

Quarta propositio (11) Nihilominus *Prob. 4.*
 quamvis constet de crimine, ante tamen
 condemnationem non licet fisco occu-
 pare bona hæreticorum. Hæc est om-
 nium, & est determinatio dicti c. *cum se-*
cundum. Imò esset contra jus divinum,
 & naturale, ut pœna daretur executio-
 ni antequam quis condemnaretur.

Sequitur ex tertia (12) conclusione, *Corollar. 1*
 quòd condemnatione facta etiam post
 mortem, retroagitur confiscatio, ad tem-
 pus commissi criminis ad quamcunque
 pervenerit potestatem. Hoc corolla-
 rium est etiam omnium, & particula-
 riter Banorm. inc. si. de hæreticis.

Secundo sequitur, quòd (13) vendi-*Coroll. 2.*
 tiones, donationes, & omnis alia alie-
 natio bonorum à die commissi criminis
 sunt invalidæ. Itaque facta condem-
 natione, omnes rescinduntur à fisco, &
 bona capiuntur ab eodem fisco, etiam
 pretio non restituto emptoribus. Et-
 iam hæc est omnium, & nominatim,
 Panormit. ubi. sub, & patet ex d. l. 4. C.
 de hæreticis.

Quinta propositio, Nihilominus (14.)

Prop. 5. hæreticus est Dominus in foro conscientie antequam condemnetur. Hæc propositio videtur contra Conrad. & Direct. & Joann. Andr. sed tamen est propositio Sylvest. in verbo, *hæresis. ff. 8.* Et tenet illam, & disputat ad longum Adrian. quotlib. 6. q. 2. & idem videtur dicere Cajeta. in summa. in verbo *pœna*

Prob. 1. Et probatur primò, Quia hoc ipsum scilicet, privari in foro conscientie est pœna. ergo. nullo modo debet infligi ante condemnationem: nec satis scio an jus humanum hoc posset facere. Item probatur manifestè, Quia ut patet in in illo, c. *cùm secundum leges.* eodem modo sunt confiscata bona ipso facto propter incestas nuptias. Item si mulier ingenua rapta nubat raptori: imò si quis de mercibus importatis non solvat vectigalia consueva, ipso facto bona confiscantur. Item qui illicitas merces exportat; ut arma, ferrum, ad Saracenos. ut patent omnia ista in. d. c. *cùm secundum leges:* & de incestis nuptiis. l. *cum ancillis:* & C. de raptu virgin. l. una: & de Judæis. c. *ita quorundam.* & ff. de vectig. l. fin. Imò Papa in d. c.

cùm

cum secundum; expressè dicit, quod sicut est confiscatio in illis casibus, ita vult quod fiat propter hæresim. Sed nullus negat, quin incestuosus, & raptor, & deferens arma Saracenis, & non solvens vectigalia, quin maneat verus dominus bonorum suorum in foro conscientia: quare ergo non etiam hæreticus? & ipse Conradus etiam eodem modo dicit de illis casibus, & de hæretico. & gravius esset cogere hominem iam emendatum ab hæresi, restituere bona fisco.

Sequitur corollarium, quod (15) hæreticus potest licitè vivere ex bonis suis. *Notanda*
 Secundo sequitur item, quod (16) titulo *quatuor*
 gratiofo potest transferre bona sua, puta *hæc corol-*
 ta donando. Sequitur tertio, quod *laria.*
 (17) titulo oneroso puta vendendo, aut dando in dotem si crimen posset venire in judicium, non licet transferre. Patet, quia decipit emptorem, & ponit eum in periculo perdendi & rem & pretium, si venditor condemnatur. Ultimo sequitur, quod (18) si re vera non esset periculum confiscationis, posset etiam licitè titulo oneroso alienare: ut si quis

esset hæreticus in Germania, Catholicus posset licitè emere ab illo. Grave enim esset, quod non posset licitè in aliqua civitate Lutheranorum si quis est Catholicus, emere agrum ab hæretico, nec vendere illi: quod tamen necessario esset dicendum, si omnino hæreticus non est dominus in foro conscientia.

Inferitur conclusio Ex omnibus his sequitur conclusio, Quòd (19) barbari nec propter peccata alia mortalia, nec propter peccatum infidelitatis impediuntur quin sint veri domini, tam publicè quàm, privatim, nec in hoc titulo possunt à Christianis occupari bona & terræ illorum; ut Iarè & eleganter deducit Cajet. secunda secundæ. q. 66. ar. 8.

Cajetan. Restat an ideo non essent domini, quia sunt insensati. vel amantes. Et *Quæstio* circa hoc dubium est, an ad hoc ut (20) de tertia aliquis sit capax domini, requiratur u-
caussa Ansus rationis. & Conradus quidem li-
videlicet bro, i. q. 6. ponit conclusionem, quod
Indi id- dominium convenit creaturæ irra-
circo care tionali tam sensibili quàm insensibili.
Pro-

Probatur, Quia dominium nihil aliud ^{ant domi-}
 est quàm jus utendi re in usum suum: ^{nio, quia}
 Sed bruta habent jus super super herbas ^{carent u-}
 & plantas. Genes. 1. Ecce dedi vobis ^{su ratio-}
 omnem herbam afferentem semen super ^{nis.}
 terram, & universa ligna, quæ habent in ^{Opinio}
 in semet ipsis sementem generis sui, ut sint ^{Conradi.}
 vobis in escam, & cunctis animantibus ter-
 ræ. Item astra habent jus illuminandi,
 Genes. 1. Posuit ea in firmamento cæli,
 ut lucerent ac præessent diei ac nocti. Et
 leo habet dominium super omnia ani-
 malia gressibilia, unde & rex animan-
 tium vocatur. Et aquila est domina
 inter volucres unde Psalm. 103. Herodii ^{Et Sylvest}
 domus dux est eorum. Eiusdem senten-
 tia est Sylvest. in verbo dominium, in
 Principio, ubi dicit, quòd elementa do-
 minantur invicem.

Sed respondeo per propositiones.
 Prima, Creaturæ irrationales non pos- ^{Respondet}
 sunt habere dominium. Patet, Quia do- ^{autem pro-}
 minium est jus, ut faretur etiam Con- ^{positioni-}
 rad sed creaturæ irrationales non pos- ^{bus ali-}
 sunt habere jus; ergo nec dominium. ^{quot.}
 Probatur minor; quia non pos- ^{1. Prop.}
 sunt pati injuriam, ergo non habent jus, ^{Probat. 1.}
 X § Pro- ^{Rejicitur}

simul Con- probatur assumptum, Quia qui prohi-
radis Syl- beret lupum, aut leonem à præda, vel
vest. opi bovem à pastu, non faceret ei injuriam,
nio. nec qui claudit fenestrâ ne sol illuminet,
 facit injuriam soli. Et confirmatur.

Quia si bruta habent dominium, ergo
 qui tolleret herbam cervo, faceret fur-
 tum, quia caperet alienum invito do-
 mino. Item, Feræ non habent domini-
 um sui; ergo multo minus aliarum re-
 rum. Assumptum probatur, Quia li-
 cet eas impunè interficere etiam animi
 gratia: unde etiam Philos. 1. polit. quod
 venatio ferarum est justa & naturalis.

Item, ipsæ feræ & omnia irrationalia, sunt
 hominis per proprietatem, multo magis
 quàm servi. ergo si servi non possunt ha-
 bere aliquid suum, multo minus irratio-
 nalia. Et confirmatur propositio auto-
 ritate S. Tho. prima secundæ, q. 1. ar. 1. &
 2. & q. 6 ar. 2. & contra Gent, lib. 3. c.
 110. sola creatura rationalis habet domi-
 nium sui actus, quia ut ipse etiam dicit
 prima p. q. 82. a 1. ad 3. per hoc aliquis
 est dominus suorum actuum, quia pot-
 est hoc vel illud eligere. Unde etiam,
 ut ibidem dicit, appetitus circa ultimum
 finem non sumus domini. si ergo bruta
 non

non habent dominium suorum actuum, ergo nec aliarum rerum. Et licet disputio videatur de nomine, certè hoc est valde improprie loqui, & præter communem modum loquendi tribuere dominium irrationalibus. Non enim dicimus aliquem esse dominum, nisi ejus, quod situm est in sua facultate. Ita enim loquimur: Non est in mea facultate; non est in mea potestate, quando non sum dominus. Bruta autem cum non moveant se, sed potius moveantur, ut S. Tho. ait prima secundæ, ubi supra: eadem ratione nec habent dominium,

Nec valet quod Sylvest. dicit, quod *Ratio Syl-* dominium aliquando non dicit jus, sed *vestri re-* solam potentiam. & hoc modo ignis ha-
scellitur, bet dominium in aquam; si enim hoc satis est ad dominium, ergo latro habet dominium ad interficiendum hominem, quia habet potentiam ad hoc, & fur habet potentiam ad capiendum pecuni-
am. Quod autem dicit astra domina-
ri, & leonem esse regem, certum est dictum metaphoricè, & per translationem.

Sed

Dubium Sed (12) potest videri dubium de pueri aetate, *de puero*, ero ante usum rationis an possit esse dominus *cui ante* minus. Quia videtur nihil differre ab irrationis rationalibus: & Apostolus ad Galat. 4. *usum non* Quanto tempore heres parvulus est, nihil videtur differt à servo. Sed servus est dominus, convenire ergo, &c. Sed sit secunda Propositio. *dominiā*. Pueri ante usum rationis possunt esse

2. *Prop.* domini. Hoc patet, Quia possunt pati

Prob. 1. injuriam, ergo habent jus rerum. ergo & dominium, quod nihil aliud est,

1. quàm jus. Item bona pupillorū non sunt in bonis tutorum: & habent dominos, & non alios; ergo pupillos. Item, pueri

3. sunt hæredes; Sed hæres est qui succedit jus defuncti, & qui est dominus hæreditatis. l. cum heres. ff. de diver. & tempora præscrip. & inst. de hæred. qualitat. & differentia. §. fin. Item diximus, quòd fundamentum dominii est imago DEI, quæ adhuc est in pueris & Apostolus eodem loco Galat. 4. *Quanto tempore heres parvulus est, nihil differt à servo, cum sit dominus omnium.* Nec est idem de creatura irrationali, quia puer non est propter alium, sed propter se, sicut est brutum.

Sed

Sed (22) de amentibus quid? Dico de perpetuo amentibus, qui nec habent, nec est spes quod habituri sint usum rationis: sit tertia propositio. Videtur adhuc quod possint esse domini, quia possunt pati injuriam: ergo habent jus, sed hoc remitto ad jurisconsultos, utrum possint habere dominium civile.

Quicquid sit de hoc, sit quarta propositio, Nec (23) ex hac parte impediuntur barbari ne sint veri domini. Probatur, Quia secundum rei veritatem non sunt amentes, sed habent pro suo modo usum rationis. Patet, Quia habent ordinem aliquem in suis rebus, postquam habent civitates; quæ ordine constant, & habent matrimonia distincta, magistratus dominos, leges, opificia, commutationes, quæ omnia requirunt usum rationis: item religionis speciem: item non errant in rebus, quæ aliis sunt evidentes quod est indicium usus rationis. Item DEUS & natura non deficiunt in necessariis pro magna, parte speciei: præcipuum autem in homine est ratio, & frustra est potentia, quæ

Barbari in novo orbe non omnino carent ratione.

quæ non reducitur ad actum. Item fu-
issent sine culpa sua tot millibus anno-
rum extra statum salutis, cùm essent na-
ti in peccato, & non haberent bap-
tismum nec usum rationis ad quærendam
necessaria ad salutem unde quod vide-
antur tam insensati & hebetes, puto ma-
xima ex parte venire ex mala & barbara
educatione, cum etiam apud nos videa-
mus multos rusticorum parum diffe-
rentes à brutis animantibus.

Conclusio Restat ergo ex omnibus dictis, quod
principa- sine dubio barbari erant & publicè &
lis ex di- privatim ita veri domini, sicut Chri-
etis colle- siani: (24.) nec hoc titulo potuerunt
ita. spoliari aut principes, aut privati re-
bus suis, quod non essent veri domini.
Et grave esset negare illis, qui nihil in-
jurix unquam fecerunt, quod conce-
dimus Saracenis, & Judæis perpetuis
hostibus religionis Christianæ: quos
non negamus habere vera dominia re-
rum suarum, si alias non occupaverunt
terras Christianorum.

Respon. Super est respondere ad argumen-
tum

tum in contrarium, ubi arguebatur, ^{ad . arg.}
 quòd isti videntur servi à natura, ^{pro parte}
 quia Parum valent ratione ad ^{neg. p. s. e. u.}
 regendum etiam se ipsos. Ad hoc respon- ^{supra nu-}
 deo, quòd certe Aristoteles non intel- ^{meri 4. u-}
 lexit, quòd tales, qui parum valent in- ^{bi exponi-}
 genio, sint naturà alieni juris, & non ha- ^{tur} *Locus*
 beant dominium, & sui & aliarum rerum: *Aristot. 2.*
 hæc enim est servitus civilis & legitima *Politic.*
 quo nullus est servus a natura. Nec
 vult Philosophus, si qui sunt naturà
 parum mente validi, quod liceat occu-
 pare patrimonia illorum, & illos redi-
 gere in servitutem & venales facere:
 sed vult docere, quod a natura est in il-
 lis necessitas, propter quam indigent ab
 aliis regi & gubernari: & bonum est il-
 lis subdialii, sicut filii indigent subiaci
 parentibus ante adultam ætatem, &
 uxor viro. Et quod hæc sit intentio
 Philosophi, patet: quia eodem modo
 dicit, quòd natura sunt aliqui domini,
 scilicet qui valent intellectu. Certum
 est autem, quòd non intelligit, quod ta-
 les possent sibi arripere imperium in
 alios illo titulo, quod sint sapiētiores, sed
 quia natura habent facultatem, ut pos-
 sint

sunt imperare & regere. Et sic, dato quòd isti barbari sunt ita inepti & hebetes, ut dicitur: non ideo negandum est habere dominium, nec sunt in numero servorum civilium habendi. Verum est, quòd ex hac ratione & titulo posset oriri aliquod jus ad subjiciendum eos, ut infra dicemus. Restat con-

clusio certa, Quòd antequam Hispani ad illos venissent, illi
erant veri domini,
& publicè &
privatim.



DE TITULIS NON LEGITIMIS,
QVIBUS BARBARI NOVI ORBIS VE-
NIRE POTUERINT IN DITIONEM
HISPANORUM.

1. Imperator non est totius orbis dominus.
2. Imperator, licet esset dominus mundi, non ob id posset occupare provincias barbarorum, & constituere novos dominos, & veteres deponere, vel vectigalia capere.
3. Papa non est dominus civilis, aut temporalis totius orbis, loquendo propriè de dominio, & potestate civili.
4. Summus Pontifex, quamvis haberet potestatem secularem in mundum, non posset eam dare principibus secularibus.
5. Papa, habet potestatem temporalem in ordine ad spiritualia.
6. Papa, nullam potestatem temporalem habet in barbaros Indos, neque in alios infideles.
7. Barbari si nolint recognoscere dominium ali-

quod

- quod Papæ, non ob id potest eis bellum inferri, & illorum bona occupari.*
8. *Barbari, an priusquam aliquid audissent de fide Christi, peccarent peccato infidelitatis, eo quod non crederent Christo.*
9. *Ignorantia ad hoc quod alicui imputetur, & sit peccatum, vel vincibilis, quid requiratur. Et quid de ignorantia invincibili.*
10. *Barbari, an ad primum fidei Christianæ nuntium teneantur credere, ita ut peccent mortaliter non credentes Christi Evangelium, solum per simplicem annuntiationem, &c*
11. *Barbaris si simpliciter fides annuntiaretur & proponeretur, & nollent statim recipere, hac ratione non possent. Hispani illis bellum inferre, neque jure belli contra eos agere.*
12. *Barbari rogati & admoniti, ut audiant pacificè loquentès de Religione, quomodo, si nolint, non excusentur à peccato mortali.*
13. *Barbari quando tenerentur recipere Christi fidem, sub mortalis peccati poena.*
14. *Barbaris an hætenus ita proposita & annuntiata fuerit fides Christiana, ut teneantur credere sub novo peccato, non satis liquet secundum autorem.*

15. *Barbaris, etsi quantumcumque fides annuntiata probabiliter & sufficienter fuerit, & noluerint eam recipere, non tamen ob id licet eos bello persequi, & bonis suis spoliare*

16. *Principes Christiani, non possunt, etiam auctoritate Papæ, coercere barbaros à peccatis contra legem naturæ, nec ratione illorum eos punire.*

Supposito ergo Quod sunt vel erant veri domini, superest videre quo titulo potuerint Hispani venire in possessionem illorum vel illius regionis: & primò referamus titulos qui possint prætendi, sed non idonei nec legitimi. Secundò ponam alios titulos legitimos, quibus potuerint barbari venire in ditionem Hispanorum. Sunt autem septem tituli, qui possunt prætendi, sed non idonei, septem autem alii vel octo justī & legitimi.

Primus ergo titulus posset esse quòd Imperator est dominus mundi: & sic dato, quòd tempore præterito fuisset aliquid vitii, tam esset purgatum in Cæsare imperatore Christianissimo. Nam dato quòd ita sit, quòd sint veri domini, possent habere superiores dominos, sicut inferiores principes

Statuit autor adferretitulos, tam legitimos, quam non legitimos, quibus Hispani venerint in possessionē regionis barbarorum.

Primus titulus non legitimus.

cipes habent regem, & aliqui reges habent imperatorem, quare in eandem rem possunt plures habere dominium: unde est illa distinctio juristarum trita, dominium altum, bassum, directum, utile, merum mixtum. Dubitatur ergo utrum isti haberent dominum superiorem. Et quia non potest esse dubium nisi de Imperatore, aut de Papa de istis dicemus.

Quaestio Et videtur primò, quod Imperator sit,

An Impe- totius orbis Dominus, & per consequens
rator sit etiam barbarorum. Primum ex communi
totius or- appellatione, quam tribuunt Imperatori,
bis domi- Divo Maximiliano, aut Carolo semper
nus. pro Augusto, orbis Domino. Item, *Exint edi-*
part. affir. Etum à Cesare Augusto, ut describeretur uni-

Arg. 1. *versus orbis, Luc 2.* Sed non debent esse pe-

II. III. joris conditionis Imperatores Christiani ergo. Item, Dominus videtur judicasse Caesarem, esse verum Dominum Judæorum.

Reddite, inquit, quæ sunt Caesaris, Cesari, &c.

Luc. 20. non videtur autem quod jus posset habere, nisi quia Imperator: ergo de hoc

Bartoli & *Bart. in extravagant. ad reprimen.* quæ est
glos. sen- Henri 7. tenet expressè, quod Imperator de
sentia pro- jure est totius orbis Dominus. Et idem
parte affir. tenet *glos in c. per venerabil. qui filii sint legi.*

Probat. l. Et idem ad longum *glo in c. venerabil. de cle-*
ctio. & probant primò, *s. q. i. in apibus*, ubi Hie-

ronymus dicit, quod in apibus unus est rex, & in mundo unus Imperator. Item ff. *ad. l. Rhodi. l. deprecatio*, ubi Imperator Antonius dicit, Ego quidem mundi Dominus. Et in *l. bene à Zenone. C. de quadru. præscrip.* omnia principis esse intelliguntur. Et posset etiam probari: quia Adam primò, & postea *Probat. 2.* Noe videntur fuisse Domini orbis, *Genes. 1. Faciamus hominem ad imaginem & similitudinem nostram, ut præsit piscibus maris & volatilibus cæli, universæque terræ, &c. & infra: crescite, & multiplicamini, & replete terram, & subjicite eam, &c.* Et idem in sententia dictum est Noe *Genes. 8.* Sed illi habuerunt successores, ergo. Item quia non est cre- *Probat. 3.* dendum, quin Deus insituerit in orbe optimum genus gubernationis, *Psal. 103. Omnia in sapientia fecisti.* Sed illud est Monarchia, ut *S. Thom.* egregiè disputat, de *reg. princ. libr. 1. c. 2.* & videtur sentire *Arist. 3. Politic.* ergo videtur quod ex institutione divina debeat esse unus Imperator in orbe. Item ea quæ sunt præter naturam, debent *Probat. 4.* imitari naturalia: sed in naturalibus est semper unus rector; in corpore cor; in anima una ratio: ergo ita debet esse in orbe unus rector, sicut unus Deus.

Sed hæc opinio est sine aliquo funda- *Resicitur* mento. Et ideo sit prima conclusio. Impe- *Bart. sen-*

tentia &
ponitur.

I. Prop.

Probatur,
non com-
petere do-
minium
totius or-
bis Impe-
ratori ju-
re natu-
rali.

rator [1] non est dominus totius orbis. Pro-
batur, quia dominum non potest esse nisi
vel jure naturali, vel divino, vel humano:
Sed nullo tali est dominus orbis, ergo. Mi-
nor probatur, primum de jure naturali,
quia ut bene dicit *S. Tho. 1. p. q. 92. artic. 1. ad*
secundum, & q. 96. artic. 4. In jure naturali
homines liberi sunt, excepto dominio pa-
terno, & maritali. De jure enim naturali
pater habet dominium supra filios, & ma-
ritus in uxorem. Ergo nullus est qui jure
naturali habeat imperium orbis. Et, sicut
etiam dicit *S. Tho. secunda secundæ, q. 10.*
artic. 10. dominium & prælatio introducta
sunt jure humano, ergo non sunt de jure
naturali: nec esset major ratio quare hoc
dominium conveniret Germanis magis
quam Gallis: Et *Arist. 10. Politic.* Duplex est
potestas, una familiaris: ut patris ad filios,
& viri ad uxorem, & hæc est naturalis. Alia
est civilis, quæ licet à natura quidem habe-
at ortum, & ideo potest dici de jure natu-
ræ, ut *S. Tho. dicit lib. 1. de regimini prin. c. 1.*
est enim homo animal civile: non tamen
natura sed lege constituta est.

Probatur De jure autem divino ante adventum
nec jure Christi redemptoris non legimus fuisse Im-
divino peratores dominos mundi, quamvis gloss.
Imperato. illa Bar. in extravagan. ad reprimend. ad-
ducatur

ducat de Nabuchodonosor, Dani. 9. de quo *rem esse*
 dicitur, *Tu rex regumes, Deus Cœli regnum, totius or-*
fortitudinem, gloriam, & imperium dedit tibi, bis domi-
& omnia in quibus habitarent filii hominum, num.
 sed certum est, quòd nec Nabuchodonosor *Prob. I.*
 accepit imperium specialiter à Deo, sed eo *Quomodo*
 modo quo alii principes. Rom. 13. *Omnis po-* *intelligen-*
testas à Domino Deo est. & Proverb. 8. Per me dus locus
reges regnant, & legam conditores justa decer- *Danielis.*
nunt. Nec etiam habuit imperium jure in
 totum orbem, ut putat *Barth.* nam Judæi
 non erant subjecti ei jure. Item ex hoc ipso *Prob. II.*
 patet, quòd nullus erat de jure divino do-
 minus totius mundi, quia gens Judæorum
 erat libera ab omni alienigena, imò erat,
 prohibitum in lege, ut haberent dominum
 alienigenam Deu. 17. *Non poteris alterius gen-*
tis hominem regem facere. Et quamvis *S. Tho.*
de regi. Princi lib. 3. c. 4. & 5. videatur dicere
 quòd imperium Romanor. fuit à Deo tradi- *Quomodo*
 tum propter justitiam illorum & amorem *Deus di-*
 patriæ, & propter optimas leges, quas habe- *catur tra-*
 bant, hoc non est intelligendum, quòd ex *didisse Ro-*
 traditione, aut ex institutione divina, ha- *manis ins-*
 berent imperium; ut August. etiam dicit *perium.*
 18. de civit. Dei; sed quòd providentia di-
 vina factum est, ut consequerentur impe-
 rium orbis: sed alio jure scilicet vel justì bel-
 li, vel alia ratione, non eo modo quo habuit
 Saul,

III. Prop. Saul, & David regnum à Deo. Et hoc facile intelliget quis si consideret, quæ ratione & successione imperia & dominia in orbe pervenerint usque ad nos: ut enim omitamus omnia, quæ præcesserunt diluvium, certè post Noe orbis fuit divisus in diversas provincias & regne sive hoc fuerit ex ipsius Noe ordinatione, qui supervixit diluvio 350. annos, *Genes. 9.* qui in diversas regiones misit colonias, ut patet apud Berosum Babylonicum: sive quod verisimilius est, ex consensu motuo gentium, diversæ familie occupaverunt diversas provincias, ut *Genes. 13.* *Abraham dixit ad loth, Ecce universa terra coram te est, si ad sinistram juris, ergo dextram tenebo: si tu dextram elegeris, ego ad sinistram pergam.* Unde *Genes. 10.* traditur quod per pronepotes Noe divisæ sunt nationes, & regiones, sive in aliquibus regionibus primò inceperint esse domini per tyrannidem, sicut videtur fuisse Nemrod, de quo *Genes. 10.* quod primus incepit esse potens in terra: sive convenientibus in unum aliquibus in unam Rempublicam ex consensu communi sibi constituerunt principem. Certum est enim vel his, vel aliis non dissimilibus modis dominia, & imperia incæpisse in mundo, ac postea, vel jure hæreditario, vel jure belli, vel aliquo alio
tali

tali titulo derivata esse usque ad nostram ætatem, saltem usque ad adventum Salvatoris. Ex quo patet, nullum ante adventum Christi habuisse jure Divino orbis imperium, neque illo titulo hodie posse imperatorem sibi arrogare orbis dominium, & per consequens nec barbarorum.

Sed post adventum Domini posset quis *Ratio. ex* pretendere, quod ex traditione Christi *es-qua vide-* set unus imperator in orbe: quia Christus *tur Impe-* etiam secundum humanitatem fuit orbis *rator post* dominus, juxta illud Matth. 28. *Data est adventu* *mihî omnis potestas*, &c. quod secundum Au- *Christi* gustin. & Hieronymum intelligitur secundum *esse orbis* humanitatem. Et, *Omnia subiocit subrotius do-* *pedibus ejus*, ut introducit Apostolus 1. Co- *minus* rinth. 15. ergo sicut reliquit in terra unum vicarium in spiritualibus, ita reliquit etiam in temporalibus, & hic est imperator. Et S. Thom. de regi. princ. lib. 3. c. 13. dicit, quod Christus à nativitate sua erat verus mundi dominus, & monarcha, cujus vices gerebat Augustus, licet non intelligens: Clarum est, quod non gerebat vices in spiritualibus, sed in temporalib. Cum ergo regnum Christi si fuit temporale, fuit in toto orbe, ergo etiam Augustus erat Dominus orbis, & eadem ratione successores ejus.

Sed

Refellit Sed neque hoc dici ullo modo potest Pri-
autor ra- mùm quia hoc ipsum est dubium, an Chri-
stonem ad stus secundum humanitatem fuerit Domi-
latam. nus temporalis orbis. Et probilius est quòd
 non , & ipse Dominus videtur asseruisse
 in illo loco, *Regnum meum non est de hoc modo.*
 Unde & S. Th. illic dicit quòd dominium
 Christo directè ordinatur ad salutem ani-
 mæ, & ad spiritualia bona, licet à tempora-
 libus non excludatur eo modo, quo ad spi-
 ritualia ordinatur. Unde patet, quòd non
 est sententia S. Thom. quòd regnum ejus
 esset ejusdem rationis cum regno civili &
 temporali, sed ita est, quòd ad finem re-
 demptionis habebat omnimodam potesta-
 tem, etiam in temporalibus: sed secluso il-
 lo fine, nullam habebat. Et præterea, dato
 quòd fuisset Dominus temporalis, hoc est di-
 vinare, dicere quod reliquit illam potesta-
 tem Imperatori, cum de hoc nulla mentio
 facta sit in tota scriptura. Et quod S. Tho.
 dicit, quòd Augustus gerebat vices Christi,
 primum hoc dixit ibi: In tertia autē parte,
 ubi loquitur ex instituto de potestate Chri-
 sti, nullam mentionem facit de hac tem-
 porali potestate Christi. Secundo S. Tho.
 intelligit, quod gerebat vices Christi quate-
 nus temporalis potestas est subiecta & mi-
 nistra spiritualis potestatis, imò hoc modo
 reges

reges sunt ministri Episcoporum, sicut & ars fabrilis est subiecta equestri, & militari: sed tamen miles, aut dux non est faber, sed habet imperare fabro in armis fabricandis. Et S. Tho. in illo loco Johan. 18. expressè dicit regnum Christi non esse temporale nec tale regnum, quale Pilatus intelligebat, sed regnum spirituale, quod ipse Dominus declarat eodem loco, *Tu dicis quia Rex sum ego: ego in hoc natus sum, & ad hoc veni in mundum, ut testimonium perhibeam veritati.* Et sic patet, quod est merum commentum dicerè quod ex traditione Christi sit unus Imperator & Dominus mundi.

Quod etiam apertè confirmatur, Quia si *Redit au-* hoc esset ex jure divino, quomodo impe- *tor ad con-* rium fuit divisum in Orientale? primò in- *firmādam* ter filios magni Constantini, & postea ab *proposit.* Stephano Papa, qui imperium Occidentale transtulit ad Germanos, ut habetur in *Pontifex* c. *venerabil.* De electione est enim ineptū, qui impe- & ineruditum, quod glo. dicit, quod Græ- *rium trā.* ci postea non fuerunt Imperatores. Nun- *stulit, tra-* quam enim Imperatores Germani hoc ti- *ditur fu-* tulo prætenderunt se esse Græciæ dominos. *isse Leo* Et Iohannes Palæologus Imperator Con- *hujus no-* stantinopolitanus, in Concilio Florentino *minister-* habitus est pro legitimo Imperatore. Et præ *terus.* terea patrimonium Ecclesiæ (ut fatentur ipsi

ipsi Iuristæ, etiam Bartolus) non est subiectum imperatori. quod si omnia essent subiecta imperatori iure Divino, ex nulla donatione imperatorum, nec alio titulo potuissent eximi ab imperatore, sicut nec Papa potest quenquam eximere à potestate Papæ. Item nec regnum Hispaniæ est subiectum imperatori, nec Francorum; ut etiam habetur in d. c. *per venerabilem*. licet glos. ex capite suo addat, quod hoc non est de jure sed de facto. It. Doctores concedunt quod civitates, quæ aliquando fuerunt subiectæ imperio potuerunt per consuetudinem eximi ab imperio: quod non esset, si subiectio hæc esset de jure Divino.

Probat au. De jure autem humano constat, quod *tor.*, nec imperator non est dominus orbis. *Quia* *jure hu.* vel esset sola autoritate legis: & nulla talis *mona Im.* est. & si esset, nihil operaretur, quia lex præperatorē supponit jurisdictionem. Si ergo ante legem non habebat imperator jurisdictionē *esse mundi* in orbe, lex non potuit obligare non subditos; nec hoc habuit imperator aut per legitimam successionem, aut donationem, aut per mutationem, aut emptionem, aut iusto bello, aut electione, aut aliquo alio legali titulo, ut constat. Ergo nunquam imperator fuit dominus totius mundi.

II. Prop. Secunda conclusio, Dato [2] quod impera-

perator esset dominus mundi, non ideo posset occupare provincias barbarorum, & constituere novos dominos, & veteres deponere, vel vectigalia capere. Probat, *Ut gl. in* Quia etiam qui imperatori tribuunt dominium *proæmio* orbis, non dicunt eum esse dominum per *agestorū.* proprietatem, sed solum per jurisdictionem quod jus non se extendit ad hoc, ut convertat provincias in suos usus, aut donet pro suo arbitrio oppida, aut etiam prædia. Ex dictis ergo patet, quod hoc titulo non possunt Hispani occupare illas provincias.

Secundus titulus qui prædentitur, & qui *Secundus* dem vehementer asseritur ad justam possessionem *titulus,* illarum provinciarum, est ex *quo Hi-* parte summi Pontificis. Dicunt enim quod *spani po-* summus Pontifex est monarcha etiam temporalis in toto orbe; & per consequens, *uerine* quod potuit constituere Hispaniarum *venire in* reges principes illorum barbarorum: & ita *passessione* factum est. *barbaro-
rū tract.*

Circa hoc opinio est quorundam jurisconsultorum, quod Papa habet plenam jurisdictionem in temporalibus in toto orbe terrarum: adjicientes etiam, quod omnium principum secularium potestas à Papa in eos derivata sit. Ita tenet Hostiensis, capit. *Opinio* quod super his. de voto & Archiepiscopus 3, *quorum-* parte, titulo. 22, capite. 5. §. 8. & Augustus. *dam juris* Anch. *consulto-*

Anch. ita tenet Sylvester qvi multo etiam largius, & benignius tribuit hanc potestatem Papæ, in verbo, *infidelitas*, §. 7. & in verbo, *Papa*. §. 7. 10. 11. & 14. & in verbo, *legimus*. §. 4. mirabilia dicit in illis locis circa hoc: ut pūta, qvòd potestas imperatoris & omnium aliorum principum est subdelegata respectu Papæ, & qvòd est derivata à DEO mediante Papa, & qvòd tota illorum potestas dependet à Papa, & qvòd Constantinus donavit terras Papæ, in recognitionem dominii temporalis. Et econtrario Papa donavit Constantino imperium in usum & stipendium. Imò qvòd Constantinus nihil donavit, sed reddidit qvòd erat subtractum: & qvòd si Papa non exerceat jurisdictionem in temporalibus extra patrimonium Ecclesiæ, non fit propter defectum autoritatis, sed ad vitandum scandalum Judæorum, & ad nutriendam pacem, & multa alia his vaniora, & absurdiora. Tota probatio istorum est, qvia, *Domini est terra, & plenitudo ejus: & Data est mihi omnis potestas in celo & in terra.* & Papa est vicarius DEI & CHRISTI, & ad Eph. 2. Christus *facta est pro nobis obediens usque ad mortem*, &c. Et hujus opinionis etiam videtur esse Bartol. in illa extrava, *ad reprimendam* & vitedur vasere S. Thom. in fine
secun-

secundi sententiarum, cujus ultima verba sunt in solutione ad quartum argumentum, quod est ultimum totius libri, quod Papa tenet utriusque potestatis apicem, scilicet secularis & spiritualis, & ejusdem opinionis est Herveus de potestate Ecclesiæ.

Hoc ergo fundamento jacto, dicunt auctores hujus sententiæ. Primo, quod Papa liberè potuit constituere principes barbarorum reges Hispaniæ, tanquam supremus dominus temporalis. Secundo dicunt, quod dato quod hoc non posset, saltem si barbari nolunt recognoscere dominium temporale Papæ in eos, quod hac ratione potest eis inferre bellum, & imponere principes. Utrunqve autem factum est: nam primo summus Pontifex concessit illas provincias Regibus Hispaniæ. Secundo etiam barbaris propositum fuit, & significatum, quod Papa est vicarius Dei, & habet vices ejus in terris: & ideo, ut recognoscant eum superiorem, quod si illi recusaverint, isto titulo est eis bellum illatum, & occupatæ provinciæ illorum, &c. Et hoc secundum nominatim dicit Hosti. ubi supra, & summa Angel.

Sed quia de dominio temporali Papæ prolixè disputavi in relectione de potestate Ecclesiastica, ideo hic breviter per propositiones respondet autor aliorum propositionib.

l. Prop. positiones respondebo. Prima, Papa [3] non est dominus civilis, aut temporalis totius orbis, loquendo propriè de dominio & potestate civili. Hæc conclusio est Turcrema, libro secundo, c. 113. & Joh. Andr. & Hugo. 69. dist. *cum ad verum*. Et fateatur doctissimus Innocen. in d. c. *per venerabilem*, se non habere potestatem temporalem in regno Franciæ. Et videtur expressa sententia Bernardi in secundo libro de confid. ad Eugeni. Et opposita sententia videtur esse contra præceptum Domini, qui Mat. 20. & Luc. 22. ait, *Scitis quia principes gentium dominantur eorum, &c. non ita erit inter vos*. Item contra præceptum Apostoli Petri 1. c. ult. *Non dominantes in clerum, sed forma facti gregis*. Et si Christus dominus non habuit dominium temporale, ut supra tanquam probabilius disputatum est, etiam ex sententia S. Tho. multò minus Papa habet, qui est vicarius. Et isti tribuunt summo Pontifici quod ipse nunquam agnovit: imo contrarium fatetur in multis locis, ut in relectione illa dictum est. Et satis est probatum de Imperatore sicut supra: quia non potest ei convenire dominium nisi jure naturali, aut divino, aut humano. Naturali, aut humano, certum est quod non. De divino nullum profertur. ergo frustra asseritur, & voluntariè. Et

Et quòd Dominus dixit Petro, *Pasce oves* *Refutat*
meas, satis ostendit esse potestatem in spi- *autor ra-*
ritualibus, & non in temporalibus. Et prae- *tiones con-*
terea ostenditur Papam non esse in toto or- *trarie or-*
be. Nam ipse Dominus dixit Joh. 10. quòd *pinionis*
in fine seculi *fiet unum ovile*, & *unus pastor*.
Unde satis constat in praesentia, non omnes
esse oves hujus ovilis. Item dato quòd
Christus haberet hanc potestatem, constat
non esse commissam Papæ. Patet, quia non
minus Papa est vicarius Christi in spiritua-
libus, quàm in temporalibus: sed Papa non
habet jurisdictionem spiritualem super in-
fideles ut etiam fatentur adversarii, & vide-
tur expressè sententia Apostoli 1. Cor. 5.
Quid ad me de his, qui foris sunt, judicare? ex-
go nec etiam in temporalibus. Et certè ar-
gumentum nullum est Christus habuit po-
testatem temporalem in toto orbe ergo &
Papa habet. Nam Christus sine dubio ha-
buit potestatem spiritualem in toto orbe,
non minus supra fideles, quàm supra infi-
deles: & potuit ferre leges obligantes to-
tum orbem, sicut fecit de baptismo, & arti-
culis fidei: & tamen Papa non habet illam
potestatem supra infideles, nec posset eos
excommunicare, nec prohibere connubia
in gradibus jure divino permissis, ergo. Item
quia etiam secundum doctores Christus

potestatem excellentiæ non commisit etiam Apostolis, ergo etiam nihil valet consequentia, Christus habuit potestatem temporalem in orbe, ergo & Papa.

II. Prop. Secunda prop. Dato [4] quod summus Pontifex haberet talem potestatem secularem in toto orbe, non posset eam dare principibus secularibus. Hoc patet quia esset annexa Papatui; nec potest eam Papa separare ab officio summi Pontificis, nec potest privare successorem illa potestate, quia non potest esse sequens summus Pontifex minor præcessore suo: & si unus Pontifex dedisset hanc potestatem, vel nulla esset talis collatio, vel sequens Pontifex posset auferre.

III. Prop. Tertia propositio, Papa [5] habet potestatem temporalem in ordine ad spiritualia, id est quantum necesse est administrationem rerum spiritualium. Hæc etiam est Turrecremat. ubi supra c. 114. & est omnium doctorum. Et probatur, quia ars, ad quam pertinet finis superior, est imperativa & præceptiva artium ad quas spectant fines inferiores. i. Ethicor. Sed finis potestatis spiritualis est ultima facilitas, finis autem potestatis civilis est felicitas politica, ergo potestas temporalis est subiecta spirituali. Et hac ratione utitur Innocen.

in c.

In *c. sollicita*. de majori. & obedien. Et confirmatur, quia cui commissæ est cura alicujus officii, intelliguntur concessa omnia, si ne quibus officium rectè expediri non potest, *de officio de lega c. 1.* Cum ergo ex commissione Christi Papa sit pastor spiritualis & hoc officium impediri possit per potestatem civilem cum Deus & natura non deficiant in necessariis, non est dubitandum quin fuerit ei relicta potestas in temporalibus, quantum necesse est ad gubernationem spiritualium. Et hac ratione potest Papa infringere leges civiles, quæ sunt nutritivæ peccatorum, sicut infregit leges de præscriptione malæ fidei; ut patet *de præscrip. c. fin.* Et hac etiam ratione discordantibus principibus de jure alicujus principatus, & in bella ruentibus, potest esse judex, & cognoscere de jure partium, & sententiam ferre, quam tenentur recipere principes, ne scilicet eveniant tot mala spiritualia, quot ex bello inter principes Christianorum necesse est oriri. Et licet hoc vel non faciat Papa, vel non sæpe faciat, non est quia non potest, ut dicit dominus Durand. sed quia timet scandalum, ne principes putent hoc facere per ambitionem, vel veritus rebellionem principum à sedè Apostolica. Et hac ratione potest aliquando reges de-

ponere, & etiam noves constituere, sicut aliquando factum est. Et certe nullus legitime Christianus deberet negare hanc potestatem Papæ. Et ita tenent *Palud. & Durand. de potestate Eccl. & Henri. Gand. quotlibet. artic. 23.* & adhuc sensum intelligenda sunt jura quæ dicunt Papam habere utrumque gladium, quæ multa sunt, & Doctores antiquiores hoc dicunt; sicut etiam *S. Tho. in 2. Sententia*, ut citatum est.

Imò non dubito quin Episcopi habeant hoc modo auctoritatem temporalem in suo Episcopatu eadem ratione, quæ papa in orbe. Unde malè dicunt, & malè faciunt, vel principes, vel magistratus, qui contendunt impedire Episcopos ne coerceant seculares à peccatis per pœnas pecuniarias, aut exilium, aut alias pœnas temporales. Hoc enim non est supra potestatem eorum, modo non faciant ex avaritia, & ad quæstum, sed ad necessitatem, & commodum rerum spiritualium. Et ex hoc loco iterum sumitur argumentum pro prima conclusione: si enim papa esset dominus orbis, etiam Episcopus esset dominus temporalis in suo Episcopatu, quia etiam in suo Episcopatu est vicarius Christus: quod tamen adversarii negant.

IV. Prop. Quarta conclusio, papa [6] nullam potestatem.

testatem temporalem habet in barbaros istos, neque in alios infideles. Hæc patet ex 1. & 3. Nam non habet potestatem temporalem nisi in ordine ad spiritualia, sed non habet potestatem spirituales in illos. 1. Corinth. 5. ergo nec temporalem.

Sequitur corollarium, quod [7] etiam si barbari nolint recognoscere dominium aliquod papæ, non ideo potest eis bellum inferri, & bona illorum occupari. Patet, quia nullum tale dominium habet. Et confirmatur hoc manifestè. Nam (ut infra dicitur, & adversarii fatentur) dato quod barbari nolint recipere CHRISTUM pro domino, non tamen possunt bello peti, aut aliquo malo affici. Absurdissimum est autem quod ipsi dicunt, quod cum possint impune non recipere CHRISTUM, teneantur recipere vicarium ejus aliàs possint bello cogi, & spoliari omnibus bonis, imò & supplicio affici. Et confirmatur iterum, quia causa secundum istos, quare etiam si nolint recipere CHRISTUM aut fidem ejus, non possunt cogi, est quia non potest evidenter probari per rationes naturales: sed multò minus potest probari dominium papæ: ergo etiam non possunt cogi ad recognoscendum hoc dominium. Et quamvis latissimè loquatur de potestate pa-

*Probat. I.**Corollar.**Confir. 1.**Absurdi-
tas sen-
tentia cō-
trarie.**Confir. 2.**Sylvest.*

- Prob. II.** *et auctori-
tate.* pæ, tamen in verbo, *infideles*. caput 7. expresse tenet contra Hostien. quòd infideles non possunt bello cogi ad recognoscendum hoc dominium, nec hoc titulo possunt spoliari bonis suis. Et ita tenet Innocentius in d.c. *quod super his*. de vot. Et non est dubium quin S. Thom. sit hujus sententiæ, *secunda secunda*, q. 66. articulus 3 ad secundum. & Cajetanus illic expresse, ubi dicit S. Tho. quòd infideles non possunt spoliari suis bonis, nisi qui sunt subditi principibus temporalibus, propter causas legum legitimas, propter
- Prob. III.** quas etiam alii subditi possunt privari. Imò nec Saraceni inter Christianos unquam isto titulo fuerunt spoliati suis bonis, aut ali-
- Prob. IV.** quo incommodo affecti. Nam si iste titulus est sufficiens ad inferendum eis bellum, hoc tandundem est, ac si quis dicat, quòd ratione infidelitatis possunt spoliari. Certum est enim quòd nullus infidelium recognoscit hoc dominium, nullus autem Doctor, nec etiam inter adversarios est, qui hoc concedat, scilicet quòd solo titulo infidelitatis possunt spoliari: ergo omnino est sophisticum, quòd isti Doctores dicunt, quòd si infideles recognoscunt dominium Rom. Pontificis, non possunt bello infestari bene aut si non recognoscunt. Nullus enim recognoscit.

Ex quo patet, quod nec iste titulus est idoneus contra barbaros, vel quia Papa dederit provincias illas tanquam dominus absolute, vel quia non recognoscunt dominium Papæ, habent Christiani causam iusti belli contra illos. Et hanc sententiam tenet *Cajetanus* latè *secunda secunda*, q. 66. *artic. 8. ad secundum*. Nec autoritas Canonistarum in contrarium multum debet movere: quia (ut supra dictum est) hæc tractanda sunt ex jure Divino, & plures & majores contrarium tenent, inter quos etiam est Ioh. Andr. nec habent pro se aliquem textum. Nec etiam gravis autoritas Archiepisc. Florent. hoc loco recipienda est, secutus est enim August. Anch. sicut aliàs solet sequi Canonistas. Et dictis patet, quod Hispanicum primum navigaverunt ad terras barbarorum, nullum jus secum afferebant occupandi provincias illorum.

Et ideo alius titulus est, qui potest prætendi jure inventionis, nec alius titulus à principio prætendebatur: & hoc solo titulo primò navigavit Columbus Ianuen. Et videtur quod hic titulus sit idoneus, quia illa, quæ sunt deserta, sunt jure gentium & naturali occupantis. Institut. de rerum divisio. §. *fera bestia*. ergo cum Hispani fu-

*Tertius
titulus.*

erit primi, qui invenerint, & occupaverint illas provincias, sequitur quòd jure possident, sicut si solitudinem inhabitatam habent inveniissent. Sed de isto titulo qui tertius est, non oportet multa verba facere: quia ut suprà probatum est, barbari erant veri domini, & publice & privatim. Ius autem gentium est, ut quòd in nullius bonis est, occupanti conceditur: ut habetur expressè in. d. §. *fera bestia*. Unde cum illa bona non carerent domino, non cadunt sub illo titulo. Et sic litet iste titulus cum alio aliquid facere possit (ut infrà dicitur) tamen per se nihil juvat ad possessionem illorum, non plusquam si illi invenissent nos.

*Quartus
titulus
tractatus.
Et quòd
sit legiti-
mus, arg.
primum.*

Et ideo quartus titulus prætenditur, quia scilicet nolunt recipere fidem Christi cum tamen proponatur eis, & sub obtestationibus admoneantur, ut recipiant. & videtur quòd iste titulus sit legitimus ad occupandas terras barbarorum. Primo, barbari tenentor recipere fidem Christi: quia, *Qui crediderit, & baptizatus fuerit, salvus erit, qui vero non crediderit, condemnabitur.* Nullus autem condemnatur nisi pro mortali. Et actuum 4. *Non est aliud nomen datum hominibus, in quo oporteat nos salvos fieri; ergo cum Papa sit minister Christi, saltem spiri-*
tua-

tualibus, videtur quòd saltem autoritate Papæ possent cogi ad recipiendam fidem Christi: & si requisiti nolint recipere, jure belli possit agi contra eos. Imo videtur, quòd etiam principes sua autoritate hoc possint, quia sunt ministri Dei, Rom. 13. Et *vindices in iram eis qui malè agunt*; isti autem pessimè agunt, non recipientes fidem Christi. Ergo possunt cogi à principibus. Secundo, quia si Galli nollent obedire regi suo, posset rex Hispaniæ cogere illos ut obedirent ergo si nolunt obedire Deo, qui est verus & supremus dominus, possunt principes Christiani cogere illos barbaros, ut obediāt: non enim videtur quòd debeat esse peioris conditionis causa Dei, quam hominum. Et confirmatur, quia sicut arguit *Scotus 4. distin. 4. q. 9.* de pueris infidelium baptizandis, potius debet aliquis cogi ad obediendum domino superiori, quam inferiori. Si ergo cogi possent barbari, ut obedirent principibus suis. Ergo multò magis ut obediant Christo, & Deo. Tertiò, quia si blasphemarent publicè Christum, possent bello cogi, ut destituerent ab hujusmodi blasphemis, ut docetores concedunt, & verum est. Possimus enim bello persequi, si uterentur crucifixo ad irrisionem, vel quocunque modo abuterentur ad ignominiam rebus Christianis.

Arg. II.

Arg. III.

Et S. Tho.

secunda

secunda,

q. 10. ar. 8.

nis, ut fingentes ad illusionem Sacramenta Ecclesiae, vel aliquid simile. Quod etiam patet. Nam si facerent injuriam Regi Christiano, etiam defuncto, possemus vindicare injuriam, multò ergò magis si faciant injuriam Christo, qui est rex unus Christianorum. Nec de hoc est dubitandum, quia si Christus viveret inter mortales, & pagani facerent ei injuriam, non est dubium quin possemus bello persequi injuriam. ergo etiam nunc. Sed majus peccatum est infidelitas, quam blasphemia; quia ut S. Tho. dicit & probat secunda secundæ, q. 10. articu. 3. infidelitas est gravissimū inter peccata, quæ contingunt in perversitate morum, quia opponitur fidei directè, & blasphemia non opponitur directè fidei, sed confessioni fidei. Infidelitas etiam tollit principium conversionis in Deum, scilicet fidem, non autem blasphemia, si ergo pro blasphemia in Christum possunt Christiani bello persequi infideles: ergo pro ipsa infidelitate Et

Confirm.

confirmatur, quòd blasphemia non sit ita magnum peccatum, sicut infidelitas. Quia pro infidelitate est pœna capitalis Christiano per leges civiles, non autem pro blas-

Resp. ali- phemia.

quot prop Pro responsione sit prima propositio,

1. Prop. Barbari priusquam [8] aliquid audissent de

fide

fide Christi, non peccabant peccato infidelitatis, eò quod non crederent, in Christum. Hæc propositio est ad literam, *S. Thom. 2. 2. q. 10. art. 1.* ubi dicit, quod apud eos, qui nihil audierunt, de Christo, infidelitas non habet rationem peccati, sed magis pœnæ, quia talis ignorantia divinorum, ex peccato primi parentis secuta est. *Qui autem* (inquit) *sic sunt infideles, damnantur quidem propter alia peccata, sed non propter peccatum infidelitatis.* Unde dominus dicit Joan. 15. *Si non venissem, & loquutus eis non fuisset, peccatum non haberent.* Quod exponens Aug. dicit, quod loquitur de illo peccato, quo non crediderunt in Christum. Idem videtur dicere *S. Thom. secunda secunda, q. 10. artic. 6. & q. 34. artic. 2. ad secundum.*

Hæc propositio est contra multos doctores & primo contra *Altisio. 3. p. in q. Utrum fidei possit subesse falsum.* Ubi dicit, quod non potest aliquis habere ignorantiam invincibilem, non solum Christi, sed cuiuscunque articuli fidei: quia si faciat quod in se est, Dominus illuminabit, sive per Doctorem intrinsecum, sive extrinsecum: & sic semper est peccatum mortale credere aliquid contrarium articulis fidei. Ponit exemplum de vetula, cui Episcopus prædicaret aliquid contra fidei articulum. Et generatur.

Altisiodorensis, Guliel. Parisiensis, Gerson. contraria sententia, scilicet in fidelitate semper esse peccatum, recitatur.

neraliter dicit, quod ignorantia juris divini neminem excusat. Eadem fuit opinio Guillelmi Parisien. qui eodem modo argumentatur. Vel enim talis facit quod in se est, & illuminabitur: si non facit, non excusatur. Et in eadem sententia videtur, fuisse Gerson. de spirituali vita animæ. lect. 4. *Concors inquit est sententia Doctorum, quod in his, quæ sunt juris divini, non cadit ignorantia invincibilis, cum facienti quod in se est, Deus semper assistat, paratus illustrare mentem, quantum oportebit ad salutem, & erroris evitacionem.* Et

In eadem Hugo de Sancto Victore libro 2. parte 9. cap. 5. sententia dicit neminem excusari per ignorantiam à videtur præcepto baptismi suscipiendi: quia nisi esse Hugo sua culpa obstiterit, audire & scire poterit; de 5. Vict. ut exemplum est de Cornelio, Actuum 10.

Hanc sententiam & opinionem limitat Adrian. in quodlibetis, q. 4. *Ea, inquit, quæ ex parte sunt juris divini, sunt in duplici differentia. Adrian. Quædam sunt, ad quorum scientiam Deus non obligat omnes universaliter, ut sunt apices juris divini, & difficultas circa illud, & circa scripturam sacram, & præcepta: & circa hæc bene potest cadere ignorantia invincibilis, etiam si quis faciat totum quod in se est. Alia sunt, ad quorum scientiam Deus generaliter obligat omnes, ut articuli fidei, præcepta universalia legis: & de his est verum, quod Doctores dicunt, quod*

quod non potest quis excusari per ignorantiam. Si enim quis facit quod in se est, illuminabitur à Deo per Doctorem interiorem, vel exteriorem.

Sed nihilominus conclusio posita vide-
tur expressè de intentione S. Tho. Et pro-
batur; Tales, qui nunquam audierunt, *Rejēta
horum
sententia
propositi-
onem suā*
quicquam quantumcunque sint aliās pec-
catores, ignorant invincibiliter: ergo talis
ignorantia non est peccatum. Antecedens
patet ex illo ad Roma. 10. *Quomodo credent
nisi audiant: quomodo autem audient sine præ-
dicante?* ergo si non est eis prædicata fides,
ignorant invincibiliter, quia non possunt
scire. Neque Paulus condemnat infideles
quia non faciunt quod in se est, ut illumi-
nentur à Deo: sed quia cum audissent, non
crediderunt. *Nunquid inquit; non audierunt?
Et quidem in omnem terram exiit sonus eorum.*
Ex hoc condemnat illos, quia in omnem ter-
ram fuit prædicatum Evangelium, aliās nō
condemnaturus quantumcunque habe-
rent alia peccat.

Unde etiam decipitur Adrianus in alio
puncto circa materiam de ignorantia. Di-
cit enim in eodem quod lib. quod etiam in
materia morum, si quis adhibet omnem
industriam & diligentiam ad sciendum ea
quæ oportet, non satis est ad excusationem
ignorantiæ, nisi per contritionem peccato-
*Adriani
in mate-
ria de ig-
norantia
de cēptio.*

rum disponat se at hoc ut illuminetur à Deo: ut si quis dubitat de aliquo contractu, & quærit à viris doctis, & aliàs laborat ad sciendum veritatem, & putat esse licitum: si fortè non est licitus, & exercet, non excusatur. Si forte aliàs est in peccato, quia non facit totum quod in se est ad vincendum ignorantiam, & licet stet, quod etiam si disponat se ad gratiam, non illuminetur: tamen non excusatur, nisi tollat hoc impedimentum, scilicet peccatum. Unde si de eodem casu & contractu Petrus & Johannes dubitant, & faciunt æqualem diligentiam humanam, & uterque putat esse licitum: Petrus autem est in gratia, Johannes in peccato: Petrus habet ignorantiam invincibilem, Johannes vincibilem: & si uterque exerceat contractum, Petrus excusatur, Johannes non excusatur. Fallitur

Ratio an- inquam in hoc, sicut à me disputatum est
toris con- latè prima secundæ, in materia de ignoran-
tia Adri- tia. Mirabile enim esset dicere, quod in nul-
anum. la materia juris divini posset habere ignorantiam invincibilem infidelis, imò quicumque est in peccato mortali. Imò sequitur, quod ille Petrus, qui erat in gratia, & ignorabat invincibiliter aliquid circa usuram, aut simoniam, solum per hoc quod caderet in mortale, illa ignorantia fieret vincibilis, quod absurdum est. Un-

Unde dico, quòd [9] ad hoc, quòd igno- *Sententia*
 rantia imputetur, & sit peccatum, vel vin- *autoris de*
 cibilis, requiritur negligentia circa illam *ignorantia*
 materiam, puta, quia noluit audire, vel *via quæ est*
 auditum non credidit: & contrario ad ig- *peccatum*
 norantiam invincibilem satis est, quòd fe- *et quæ nõ*
 cerit humanam diligentiam ad sciendum, *est pecca-*
 etiamsi aliàs sit in mortali. Unde quan- *tum.*
 tum ad hoc idem est iudicium de existenti
 in peccato, & de existenti in gratia nunc &
 statim post adventum CHRISTI, vel post
 passionem ejus. Nec posset Adrianus ne- *Rursum*
 gare, quia paulò post passionem Domini, *propositi-*
 Judæi qui erant in India, vel Hispania, ig- *onem suã*
 norarent invincibiliter passionem Domini, *autor con-*
 quantumcunque essent in mortali, imò *firm.*
 expressè hoc ipse concedit in 1. q. ad quar-
 tum, in materia de observantia legalium. Et
 certum est, quòd Judæi absentes à Judæa,
 sive essent in peccato, sive non, habebant
 ignorantiam de baptismo invincibilem,
 aut de fide Christi. Sicut ergo tunc pote-
 rat cadere ignorantia invincibilis de hoc,
 ita & nunc apud eos, apud quos non est fa-
 cta annuntiatio de baptismo. Sed in hoc *Ratio de*
 decipiuntur isti doctores, quia putant, *ceptionis*
 quod si ponamus ignorantiam invincibi- *prædictæ*
 lem de baptismo, aut fide Christi, quod sta- *rum as-*
 tum consequitur, quod possit aliquis salvari *torum,*
 sine

sine baptismo, aut fide CHRISTI quod tamen non sequitur Barbari enim ad quos non pervenit annuntiatio fidei, aut religionis Christianæ, damnabuntur propter peccata mortalia, aut idololatriam, sed non propter peccatum fidelitatis, ut dicit *S. Tho. 2. 2. ubi supra*, quod si facerent quod in se est bene vivendo secundum legem naturæ, ita est quod Dominus provideret, & illuminat illos circa nomen Christi: non ideo tamen, sequitur, quod si male vivant, imputetur eis ad peccatum ignorantia, aut infidelitas circa baptismum & fidem Christianam.

II. Prop. Secunda propositio, Barbari [10] Non ad primum nuntium fidei Christianæ tenentur credere, ita quod peccent mortaliter non credentes, solum per hoc, quod simpliciter annuntiatur eis, & proponitur, quod vera religio est Christiana, & quod Christus est salvator & redemptor mundi,

Prob. sine miraculis, aut quacunque alia probatione, aut suasionem. Probatur hæc conclusio ex prima: Si enim antequam aliquid audissent de religione Christi. excusabantur, non obligantur de novo per huiusmodi simplicem propositionem, & annuntiationem, cum talis annuntiatio nullum sit argumentum aut motivum ad credendum. Imò ut *Cajet. ait 2. 2. q. 1. artic. 4.* temerè &

imprudenter quis crederet aliquid, maximè in his, quæ spectant ad salutem, nisi cognoscat à viro fide digno illud asseri: quod barbari non cognoscunt, cum ignorent qui, aut quales sint, qui eis novam religionem proponunt. Et confirmatur, quia ut ait *S. Tho.* *Confir. I.* *secunda secundae, q. 1. art. 4. ad secundum argumentum. & artic. 5. ad primum*, ea quæ sunt fidei, sunt visa, & evidentia sub ratione credibilis. Non enim fidelis crederet nisi videret ea esse credenda, vel propter evidentiam signorum, vel propter aliquod hujusmodi, ergo ubi neque hujusmodi signa, neque aliquod aliud ad persuadendum concurrat, non tenentur barbari credere. Et *Confir. II.* confirmatur, quia si simul Saraceni eodem modo proponerent barbaris sectam suam simpliciter, sicut Christiani, non tenerentur eis credere, ut certum est, ergo nec Christianis sine aliquo motivo, & svasione proponentibus, quia non possunt, nec tenentur divinare utra sit verior religio, nisi appareant probabiliora motiva pro altera, parte hoc enim esset citò credere, quod est levis corde, ut dicit Ecclesiasticus c. 19. Et *Confir. III.* confirmatur per illud Johan. 15. *Si signa non fecissem, &c. peccatum non haberent.* Ergo ubi nulla fiunt signa, neque motiva, nullum erit peccatum.

Corollar.

Ex qua propositione sequitur, quòd [11] si solum illo modo proponatur fides barbaris, & non recipiant, non possint hac ratione Hispani inferre illis bellum, neque jure belli contra eos agere. Patet, quia sunt innocentes quantum ad hoc, nec fecerunt aliquam injuriam Hispanis. Et confirmatur hoc corollarium, quia ut Sanct. Thom. tradit *secunda secunda, question. 40. art. 1. ad bellum justum requiritur causa justa, ut scilicet illi, qui impugnantur propter aliquam culpam, impugnationem mereantur. Unde Augustinus dicit libro 83. q. Justa bella solent diffiniri, quæ ulciscuntur injurias, si gens, vel civitas plectenda est, quæ vel vindicare neglexerit, quod à suis improbe factum est, vel reddere quod per injuriam ablatum est.* Si ergo nulla præcessit à barbaris injuria, nulla est causa justæ belli. Et hæc est sententia communis omnium Doctorum non solum Theologorum, sed etiam juris consultorum; ut Hostiensis, Innocentii, & aliorum. Et ponit eam disertè Cajeta. 2.2. quæst. 66. articul. 8. nec scio aliquem Doctorem qui oppositum sentiat. Unde hic non esset legitimus titulus ad occupandas provincias barbarorum, & spoliandos priores dominos.

Probatur
propositio
ex senten-
tia com-
muni Do-
ctorum.

III, Prop.

Tertia propositio, Si [12] barbari rogati
& ad-

& admoniti ut audiant pacifice loquentes de religione, nollent audire, non excusarentur à peccato mortali. Probatur; quia, *Probat. 1.* ut supponimus, illi habent gravissimos errores, de quibus non habent rationes verisimiles, aut probabiles. Ergo si quis admoneat eos, ut audiant, ac deliberent de rebus spectantibus ad religionem, tenentur saltem audire, & consultare. Item ne- *Probat. 2.* cessarium est eis ad salutem credere in Christum, & baptizari Marci ultimo, *qui crediderit, &c.* Sed non possunt credere, nisi audiant, ad Rom. 10. ergo tenentur audire, aliàs essent extra statum salutis, sine culpa sua, si non tenentur audire.

Quarta propositio, Si [13] fides Christiana proponatur barbaris probabiliter, id est cum argumentis probabilibus, & rationalibus, & cum vita honesta, & secundum legem naturæ studiosa, quæ magnum est argumentum ad confirmandam veritatem: & hoc non semel, & perfunctoriè, sed diligenter & studiosè, barbari tenentur recipere fidem Christi sub pœna peccati mortalis. Probatur ex 3. conclus. Quia si tenentur audire, ergo & acquiescere auditis si sunt rationabilia: & patet manifestè ex illo Marci ult. *Euntes in mundum universum, predicate Evangelium omni creatura. Qui crediderit,*

Et baptizatus fuerit, salvus erit: qui vero non crediderit, condemnabitur. Et per illud Act. 4. Non est aliud nomen datum hominibus in quo oporteat nos salvos fieri.

V. Prop.

Quinta conclusio, [14] non satis liquet mihi, an fides Christiana fuerit barbaris, hactenus ita proposita, & annunciata, ut teneantur credere sub novo peccato. Hoc dico, quia (ut patet ex secunda propositione) non tenentur credere, nisi proponatur eis fides cum probabili persuasionem. Sed miracula, & signa nulla audio, nec exempla vitæ adeo religiosa: imò contrà multa scandala, seu facinora, & multas impietates. Unde non videtur quod religio Christiana satis commodè, & piè sit illis prædicata, ut illi teneantur acquiescere: quanquam videntur multi religiosi, & alii Ecclesiastici viri, & vita, & exemplis, & diligenti prædicatione sufficienter operam & industriam adhibuisse in hoc negotio, nisi ab aliis, quibus alia cura est, impediti essent.

VI. Prop.

Sexta propositio, [15] quantumcunque fides annunciata sit barbaris probabiliter & sufficienter, & noluerint eam recipere: non tamen hac ratione licet eos bello per-

Probat. 1.

sequi, & spoliare bonis suis. Hæc conclusio est expressa *S. Thom. secunda secunde, q. 10. arti. 8.* ubi dicit, quod infideles, qui nunquam

quam susceperunt fidem, sicut Gentiles & Judæi, nullo modo sunt compellendi ad fidem. Et est conclusio communis Doctorum etiam in jure canonico & civili. *Prob. 2.* batur, quia credere est voluntatis: timor autem multum minuit de voluntario, 3. Ethico. & ex timore servili duntaxat accedere ad mysteria, & sacramenta Christi, sacrilegum est. Item probatur ex cap. *de Judæis*, 45. distin. *De Judæis. autem precipit sancta synodus, nemini deinceps ad credendum vim inferre, cui enim vult Deus miseretur & quem vult, indurat.* Non est dubium quin sententia Concilii Toletani sit, ut non agatur, cum Judæis minis & terroribus ad recipiendam fidem. Et idem dicit expressè Grego. c. *qui sincera*. eâdem distin. *Qui sincera*, (inquit) *intentione extraneos à Christiana religione, ad fidem cupiunt perfectam perducere, blandimentis debent, non asperitatibus studere nam quicumque aliter agunt, & eos sub hoc velamine à consueti sui ritus voluerint cultura remove, suas illic magis quàm Dei causas probantur attendere.* item probatur propositio ex usu & consuetudine Ecclesiæ. Nunquam enim Imperatores Christiani, qui sanctissimos & sapientissimos Pontifices à consiliis habebant, bellum intulerunt infidelibus, eo quòd nollent recipere Christianam

Prob. 5. Christianam Religionem. Item bellum, nullum argumentum est pro veritate fidei Christianæ. Ergo per bellum barbari non possunt moveri ad credendum, sed ad fingendum, se credere, & recipere fidem Christianam, quod immane & sacrilegum est. Et quamvis. *Scot. in 4. dist. 4. q. ultima*, dicat quod reverentia ex- ligiose fieret, si in deos cogerentur à principibus. minis & terroribus ad fidem: hoc tamen non videtur intelligere, nisi de infidelibus, qui aliàs sunt subditi principum Christianorum, de quibus postea dicitur. Barbari autem non sunt tales: unde puto quod nec Scotus hoc afferret de barbaris istis: Patet itaque, quod neque iste titulus idoneus est & legitimus ad occupandas provincias barbarorum.

Quintus titulus tractatur Alius titulus prætenditur seriò & est titulus quintus, scilicet peccata ipsorum barbarorum. Dicunt enim quod licet non possint bello infestari ratione infidelitatis suæ, aut quia non recipiunt fidem Christianam, possunt tamen bello peti, propter alia peccata mortalia, quæ multa habent, & ipsa gravissima, ut ajunt. Circa peccata autem mortalia distinguunt. Dicunt enim, quod sunt alia peccata, quæ non sunt contra legem naturæ, sed solum contra legem divinam positivam: & pro his barbari non possunt

*Recitatur
& explicatur
sententia
Archiepiscopi*

possunt infestari bello : Alia autem sunt, *August.*
 contra naturam, ut ejus carnis humanæ, *Anthoni-*
 concubitus indifferens, cum matre, forori- *tani, Sylv.*
 bus, & cum masculis : & pro his possunt in- *Innocen-*
 festari bello, & cogi, ut ab his desistant. Et *tii. docen-*
 ratio utriusque est, quia circa alia peccata, *tium, hūc*
 quæ sunt contra legem positivam, non pot- *titulum*
 est eis ostendi evidenter, quòd malè faci- *esse legiti-*
 ant : circa alia autem contra legem naturæ, *mum.*
 potest eis ostendi, quòd offendunt Deum :
 & per consequens possunt coerceri ne of-
 fendunt Deum. Præterea possunt cogi ut
 servant legem, quam ipsi profitentur, ea
 autem est lex naturæ, ergo. Hæc est opinio.
Archiepif. Florenti. tertia parte titulo 22 cap. 5.
§. 8. post August. Anch. idem Sylves. in ver. Pa-
pæ. J. septimo : & est opinio Innocen. in c.
quod super his. de voto. ubi expressè dicit,
Credo quod si gentiles qui non habent nisi legem
naturæ contra legem naturæ faciant, poterunt
per Papam puniri. Arguitur Genes. 19. ubi
Sodomitæ puniti sunt à Deo. Cum autem Dei
judicia sint nobis exemplaria, non video quare
Papæ qui est vicarius Christi, hoc non possit.
 Hæc Inno. Et eâdem ratione poterunt au-
 toritate Papæ puniri à princip. Christianis.

Sed pono conclusionem, Principes [16] *Responsū*
 Christiani, etiam autoritate Papæ non pos- *authoris.*
 sunt coercere barbaros à peccatis contra le-

Prob. 1.

2.

gem naturæ, nec ratione illorum eos punire. Probatur primo: Quia isti præsupponunt falsum, quod Papa habeat jurisdictionem in illos, ut supra dictum est. Secundo, quia vel intelligunt universaliter pro peccatis contra legem naturæ, ut pro furto, fornicatione, adulterio, vel peculiariter pro peccatis contra naturam, de quibus *S. Tho. secunda secunda, q. 154. art. 11. & 12.* quomodo peccatum contra naturam dicitur non solum, quia est contra legem naturæ, sed contra ordinem naturalem, quod *2. ad Corinth. 2.* vocatur immunditia, secundum glossam, ut concubitus puerilis, bestialis, vel foeminae ad foeminam: de quo ad *Rom. 1.* Si secundo modo solum; contra arguitur. Quia homicidium est ita grave, vel gravius peccatum, & ita manifestum, quod si pro illis licet, ergo & pro homicidio. Item, blasphemia est ita grave peccatum, & ita manifestum. Ergo: Si Primo modo, id est generaliter pro omni peccato contra legem naturæ: contra, pro fornicatione non licet: ergo nec pro aliis peccatis quæ sunt contra legem naturæ. Antecedens patet *1. ad Corinth. 5. Scripsi vobis in Epistola, ne commisceamini fornicariis & sitis qui frater nominatur est fornicator, aut idolis serviens, &c. & infra. Quid enim mihi de his, quæ foris sunt,*

sunt, judicare; ubi S. Tho. dicit, *Praelati ac-*
ceperunt potestate super eos tantum, qui se fidei
subdiderunt. Ubi apertè patet, quòd Pau-
 lus dicit non spectare ad eum judicium de
 infidelibus, & fornicariis, aut idololatriis.
 Item nec omnia peccata contra legem na-
 turæ possunt evidenter ostendi, saltem o-
 mnibus. Item hoc tantumdem est dicere,
 ac si quis dicat, quòd propter infidelitatem
 liceat barbaros debellare: omnes enim sunt
 idololatræ. Item non licet Papæ inferre bel-
 lum Christianis, quia sunt fornicarii, aut
 fures imò quia sunt cynedi: nec ideo pot-
 est publicare terras eorum, & dare aliis prin-
 cipibus: hoc enim modo cum in omni pro-
 vincia sint multi peccatores, quotidie pos-
 sent mutari regna. Et confirmatur. *Gr. Confirm.*
 viora enim peccata sunt hæc apud Christi-
 anos, qui sciunt illa esse peccata, quàm apud
 barbaros, qui ignorant esse peccata. Item *Prob. 3.*
 mirum est, quod Papa non possit ferre leges
 infidelibus, & possit exercere judicia, & in-
 ferre pœnas. Item arguitur, & certè vide- *Prob. 4.*
 tur convincere, quia vel barbari tenentur
 ferre pœnas illatas pro illis peccatis, vel non:
 Si non tenentur, ergo nec papa potest in-
 ferre: si tenentur, ergo tenentur recogno-
 scere Papam tanquam dominum, & legis-
 latorem; Ergo si non recognoscant,
 jam

Prob. 5. jam propter hoc solum potest eis inferri bellum: quod tamen isti negant, ut supra dictum est profecto mirum est quod possunt impune negare auctoritatem, & jurisdictionem Papæ: & tamen teneantur subire judicium ejus. Item non possunt acceptare judicium Pape, qui non sunt Christiani, nullo enim alio jure Papa potest eos condemnare aut punire, nisi quia vicarius Christi. Sed isti fatentur, tam Innocentius, quam *August. Ancha.* quam etiam *Archiepi. & Sylvest.* quod non possunt puniri, quia non recipiunt Christum, ergo nec quia non recipiunt judicium Papæ, hoc enim præsupponit illud.

Refutatio Et confirmatur, quod nec iste titulus, *communis* nec præcedens sit sufficiens. Quia etiam *hujus* & in veteri Testamento, ubi tamen armis res *proximè* gerebatur, nunquam populus Israël occupavit terras infidelium: vel quia essent *antecedentis* infideles, & idololatræ, vel quia haberent alia *tituli.*

- I. peccata contra naturam (qui multa habebant, quia erant idololatræ, & alia peccata contra naturam habebant, ut quia sacrificabant filios suos, & filias suas dæmoniis) sed vel ex speciali dono Dei vel quia transitum impediabant, vel eos offenderat Item quid isti vocant profiteri legem naturæ? si est cognoscere, non totam cognoscunt: si est velle
- II.

velle servare legem naturæ, contra, etiam
volunt servare totam legem Christianam,
vellent servare. Ergo non magis profiten-
tur legem naturæ, quàm Christianam. Item
profectò majores probationes habemus ad
probandum legem Christi esse à Deo, &
esse veram quàm ad probandum quod for-
nicatio est mala, vel cavenda alia, * etiam *
lege naturali prohibita. Ergo si possunt
cogi ad observandum legem naturæ, quia
potest barbari : ergo etiam ad observatio-
nem legis Evangelicæ.

III.

Alias
querenda

Restat alius & sextus titulus, qui præ-
tenditur scilicet per electionem voluntari-
am. Hispani enim cum ad barbaros per-
veniunt, significant eis, quem admodum
rex Hispaniæ mittit eos pro commodis eo-
rum, & admonent eos, ut illum pro domino
& rege recipiant & acceptent. & illi retule-
runt placere sibi. & nihil tam naturale est,
quam voluntatem domini volentis rem su-
am in alium transferi, ratam haberi. In-
stitut. de rerum divisione. §. per traditionem.
Sed ego pono conclusionem; quod nec iste
titulus est idoneus. Patet primò, Quia
deberet abesse metus, & ignorantia, quæ
vitiant omnem electionem. Sed hæc ma-
ximè intervenit in illis electionibus, & ac-
ceptionibus nesciunt enim barbari quid
fa-

Septimus
titulus
tractaturRespons.
auctoris.
Prob 1.

- Prob. 2.* faciunt, imò fortè nec intelligunt quid petunt Hiſpani. Item hoc petunt circumſtantes armaſi ab impelli turba, & meticuloſa.
- 3.* Item cùm illi (ut ſupra dictum eſt) haberent veros dominos, & principes; non poteſt populus ſine alia rationabili cauſſa accerſere novus dominos: quod eſt in detrimentum priorum. Sicut nec econtrario ipſi domini poſſunt novum principem creare ſine aſſenſu populi. Cùm ergo in huiusmodi electionibus & acceptionibus non concurrant omnia requiſita ad legitimam electionem, omnino ille titulus non eſt idoneus, nec legitimus ad occupandas & obtinendas illas provincias.

*Septim.
titulus.*

Septimus titulus qvi poſſit prætendi, ſcilicet ex ſpeciali dono Dei. dicunt enim neſcio qvi, quòd dominus in ſuo peculiari iudicio condemnavit iſtos barbaros omnes ad perditionem, propter abominaciones ſuas & tradidit in manus Hiſpanorum, ſicut olim Cananzos in manus Iudæorum. Sed de hoc nolo multum diſputare, qvia periculoſe crederetur alicui prophetiam aſſerenti contra communem legem, & contra regulas Scripturæ, niſi miraculis confirmaretur doctrina ſua: quæ tamen nulla proferuntur ab huiusmodi prophetis. Item dato quòd ita eſſet, quòd dominus perditionem barbarorum

*Refuta-
tur ab
autore.*

1.

2

rorum facere constitueret, non tamen ideo consequitur, quod ille, qui eos perderet, esset sine culpa; sicut nec erant sine culpa reges Babiloniæ, contra Ierusalem ducebant exercitum, & filios Israel ducebant in captivitatem: licet re vera totum fuerit ex peculiari providentia Dei: sicut sæpe illis erat prædictum. Nec Ieroboam rectè auertit populum Israël à Roboam, quamvis hoc factum fuisset consilio Domini, sicut etiam Dominus per Prophetam comminatus fuerat. Et utinam secluso peccato in fidelitatis, non sint majora peccata in moribus apud aliquos Christianos, quam sunt inter illos barbaros. Scriptum quoque est

1. Iohan. 4. *Nolite credere omni spiritui, sed probate spiritus, utrum ex Deo sint.* & ut ait Rho. prima secundæ. q. 68. *Dona dantur à Spiritu sancto ad perficiendam virtutes. Unde ubi fides, aut autoritas, aut providentia ostendit, quid agendum sit, non est recurrendum ad dona.*

3.

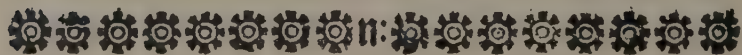
4.

Hæc de falsis & non idoneis titulis occupandi provincias barbarorum sufficiant. Sed notandum, quod ego nihil vide scriptum de hac quæstione, nec unquam interfui disputationi, aut Consilio de hac materia: unde fieri posset, ut alii fortasse fundent titulum, & iustitiam hujus negotiationis

*excusatio
auctoris.*

nis

nis, & principatus in aliquo prædictorum locorum, non sine ratione aliqve. Sed ego hæcenus non possum aliud intelligere, nisi quod dictum est: Unde si non essent alii tituli quam isti, profectò malè consultum esset saluti principium, vel potius eorum, ad quos spectat hæc dedegere. nam principes sequuntur aliorum consilium: quia per se hæc examinare non possunt. *Quid protest, inquit Dominus homini si universum mundum lucretur, seipsum vero perdat, & detrimentum sui faciat? Mar. 16. & Marc. 8. & Luc. 9.*



SECTIONIS TERTIÆ,
DE TITULIS LEGITIMIS,
QUIBUS BARBARI POTUERINT
VENIRE IN DITIONEM HISPANO-
RUM.

SUMMA.

1. *Barbari quomodo potuerunt venire in ditionem Hispanorum ratione naturalis societatis, & communitatis.*
2. *Hispani habent jus peregrinandi ad Indorum barbarorum provincias, & illic degendi*

gendi, sine tamen eorum nocumento aliquo nec possunt ab illis prohiberi.

3. Hispanis licet apud Indos barbaros negotiari, sine patria tamen incommodo, importando merces quibus illicarent, &c. & effereudo inde aurum, & argendum, vel alia quibus abundant; nec illorum Principes possunt impedimento esse, quominus subditi exerceant commercia cum Hispanis, &c.
4. Barbaris non licet prohibere Hispanos à communicatione & participatione illorum, quæ apud eos sunt communia, tam civibus, quàm hospitibus.
5. Liberi, si apud Indos nascuntur ex parentibus Hispanis illic domicilium habentibus, & velint esse ejus cives, non possunt arceri, vel à civitate, vel à commodo aliorum civium.
6. Barbari si vellent prohibere Hispanos, quominus exercerent cum illis commercia, &c. quid esset agendum.
7. Hispani si omnibus modestissimè tentatis, non possunt consequi securitatem cum barbaris seu indis, nisi civitatem occupando, & subjiciendo illos, an hoc facere licitè possint.
8. Hispani, quando, & in quo casu possent servire

servire in barbaros , tanquam in perfidos hostes, & in illos omnia belli jura prosequi, eos spoliare , imò & in captivitatem redigere , quin etiam & dominos priores depocere, & novos constituere.

9. *An barbari causa religionis Christianae propagandae potuerint in Hispanorum ditionem venire. Et Christiani habent jus praedicandi & annuntiandi Evangelium in provinciis barbarorum.*

10. *Papa, potuit negotium conversionis Indorum barbarorum solis Hispanis demandare , & omnibus aliis , non solum praedicationem, sed etiam commercium interdiceret : Si ita expediret ad Christianae religionis propagationem.*

11. *Barbari non sunt debellandi, neque bonis privandi, si permittant Hispanos liberè, & sine impedimento Evangelium praedicare, sive illi fidem recipiant, sive non.*

12. *Barbari, sive eorum domini , sive ipsa multitudo, impediunt Evangelii promulgationem, quomodo ab Hispanis (absque tamen scandalo) possint coerceri. Et quid dicendum de his , qui praedicationem adimunt, conversionem tamen, aut interfici-*
entes,

entes, aut punientes, siue terrentes, ad Christum conversos, impediunt.

13. Barbari, quomodo potuerunt in Hispanorum ditionem venire, eo quod cum essent conversi, & Christiani effecti, eorum principes vi, aut metu volentes eos ab idololatria revocare, ab Hispanis fuerint protecti & sub eorum tutelam recepti.
14. Barbari in Hispanorum venire potuerunt ditionem: quia cum bona pars eorum esset ad CHRISTUM conversa, Papa, illis petentibus, aut non petentibus, potuit ex rationabili causa dare illis Christianum principem, ut est Hispanorum rex, alius dominis infidelibus repulsis.
15. An barbari in ditionem Hispanorum venire potuerint propter tyrannidem suorum dominorum, vel propter leges tyrannicas in injuriam innocentium.
16. Barbari Indi, quod potuerint in Hispanorum ditionem venisse per veram, & voluntariam electionem.
17. Barbari, societatis, & amicitiae titulo potuerunt venire in ditionem Hispanorum.
18. An Hispani potuissent barbaros redigere sub suam ditionem, si certò constaret eos esse amentes.

Primus
titulus le-
gitimus.

1, Prop.

Probat. 1.

2.

3.

Nunc dicam de legitimis titulis, & idoneis, quibus barbari venire potuerunt in ditionem Hispanorum. Primus titulus [1] potest vocari naturalis societatis & communicationis. Et circa hoc sit prima conclusio, Hispani [2] habent jus peregrinandi in illas provincias, & illic degendi, sine aliquo tamen nocumento barbarorum, nec possunt ab illis prohiberi. Probatur primò ex jure gentium, quod vel est jus naturale, vel derivatur ex jure naturali. Instit. de jure naturali, *genti quod naturalis ratio inter omnes gentes constituit vocatur jus gentium*. Sic enim apud omnes nationes habetur in humanum, sine aliqua speciali causa hospites & peregrinos male accipere: contrario autem humanum & officiosum, se habere bene erga hospites: quod non esset, si peregrini male facerent, accedentes in alienas nationes. Secundò, à principio orbis (cùm omnia essent communia) licebat unicuique in quamque regionem vellet intendere & peregrinari. Non autem videtur hoc demptum per rerum divisionem nunquam enim fuit intentio gentium per illam divisionem tollere hominum invicem communicationem: certè temporibus Noe fuisset in humanum. Tertiò, omnia licent, quæ non sunt prohibita, aut aliàs sunt

in

in injuriam aut detrimentum aliorum. Sed
(ut supponimus) talis peregrinatio Hispano-
rum est sine injuria aut damno barba-
rorum: ergo est licita. Quartò, non lice- *Prob. 4.*
ret Gallis prohibere Hispanos à peregri-
natione Galliarum, vel etiam habitatione, aut
econtrario, si nullo modo cederet in da-
mnum illorum, nec facerent injuriam, er-
go nec barbaris. Item quintò, Exilium *5.*
est pœna etiam intercapitales: ergo non li-
cet relegare hospites sine culpa. Item sex- *6.*
tò, hæc est una pars belli, prohibere aliquos
tanquam hostes à civitate, vel provincia,
vel expellere jam existentes. Cum ergo
barbari non habeant justum bellum contra
Hispanos, supposito quod sint innoxii. Er-
go non licet illis prohibere Hispanos à pa-
tria sua. Item septimò facit illud Poetæ, *7.*

*Quod genus hoc hominum, quæve hunc tam
barba morem,*

Permittit patria, hospitio prohibemur arena?
Item octavo, *Omne animal diligit sibi simile.* *8.*
Eccles. 17. ergo videtur quod amicitia inter
homines sit de jure naturali: & contra na-
turam est vitare consortium hominum in-
noxiorum. Item novò facit illud Matth. *9.*
25. Hospes eram, & non collegistis me. Unde
cum ex jure naturali videatur esse, recipere
hospites, illud Christi judicium statuetur

10. cum omnibus. Decimò, *jure naturali communia sunt omnium, & aqua profluens, & mare, item flumina, & portus*, atqve naves jure gentium undecunqve licet applicare. Instititu, de rerum divis. & eâdem ratione videntur publica: ergo neminem licet ab illis prohibere: ex quo sequitur, quòd barbari injuriam facerent Hispanis, si prohiberent illos à suis regionibus.
11. Item undecimò, ipsi admittunt omnes alios barbaros undecunqve, ergo facerent injuriam non admittentes Hispanos.
12. Item duodecimò. Quia si Hispanis non liceret peregrinari apud illos, vel hoc esset jure naturali, aut divino, aut humano: naturali & divino, certe licet: Si autem lex humana esset, quæ prohiberet sine aliqua causa à jure naturali, & divino, esset inhumana, nec esset rationalis, & per consequens non haberet vim legis.
13. Decimo tertio, vel Hispani sunt subditi illorum, vel non. Si non subditi, ergo non possunt eos prohibere. Si sunt subditi, ergo debent eos bene tractare.
14. Item decimo quarto, Hispani sunt proximi barbarorum; ut patet ex Evangelio Luc. 10. de Samaritano. Sed tenentur diligere proximos, Matth. 22. sicut seipsos. ergo non licet prohibere illos à patria sua sine causa August. de doctrina Christiana, *Cum dicitur,*

tur, Diliges proximum tuum, manifestum est omnem hominum proximum esse.

Secunda propositio, Licet [3] Hispanis *11. Prop.*
negotiarī apud illos, sine patriæ tamen dam-
no, puta importantes illuc merces, quibus
illi carent: & adducentes illinc vel au-
rum, vel argentum, vel alia, quibus illi
abundant. Nec principes illorum pos-
sunt impedire subditos suos exerceant com-
mercia cum Hispanis, nec e contrario prin-
cipes Hispanorum possunt prohibere com-
mercia cum illis. Probatur ex primâ. Pri- *Prob. 1.*
mò, quia etiam hoc videtur jus gentium,
ut sine detrimento civium peregrini com-
mercia exerceant. Item secundo eodem *2.*
modo probatur, cum hoc liceat jure divino.
ergo lex quæ hoc prohiberet, sine dubio non
esset rationalis. Item tertio, Princeps te- *3.*
netur diligere Hispanos jure naturali: ergo
non licet eis si potest fieri sine detrimento
illorum, prohibere illos à commodis suis
sine causâ. Quarto, Quia videntur facere *4.*
contra illud proverbium, *Non facies alteri,
quod tibi fieri non vis.* Et in summa certum
est quod non plus possunt barbari prohibe- *5.*
re Hispanos à commercio suo, quam Chri-
stiani possunt prohibere alios Christianos.
Clarum est autem, quod si Hispani prohi-
berent Gallos à commercio Hispaniarum,
non propter bonum Hispaniæ, sed ne Galli
par-

participent aliquam utilitatem, lex esset iniqua, & contra charitatem. si autem hoc lege caveri iuste non potest, nec etiam factum fieri (quia lex non est iniqua, nisi propter executionem legis. & ut dicitur. ff. de iusti. & jure, velut vim *inter homines omnes cognationem quandam natura constituit*) unde contra jus naturale est, ut homo hominem sine aliqua causa aversetur. *Non enim homini homo lupus est, ut ait Ovidius, sed homo.*

- III. Prop.** Tertia propositio, Si [4] quæ sunt apud barbaros communia tam civibus quam hospitibus, non licet barbaris prohibere Hispanos à communicatione & participatione illorum. Exempli gratia, si licet aliis peregrinis vel effodere aurum in agro communi, vel ex fluminibus, vel piscari margaritas in mari, vel in flumine: non possunt barbari prohibere Hispanos, sed eo modo duntaxat, quo aliis licet, dummodo cives, & naturales incolæ non graveantur. Hæc probatur ex prima, & secunda. Nam si licet Hispanis peregrinari & negotiari apud eos, ergo licet eis uti legibus & commodis omnium peregrinorum.
- Prob. 1.** **z.** Secundò, quia quæ in nullius bonis sunt, jure gentium sunt occupantis. Instit. de rerum divi. §. *feræ bestiae*. Ergo si aurum in agro, vel margaritæ in mari, aut aliud quodcunque in fluminibus non est appropri-

priatum, jure gentium, erit occupantis, sicut & pisces in mari. Et quidem multa hinc videntur procedere ex jure gentium, quæ quia derivantur sufficienter ex jure naturali, manifestam vim habent, ad dandum jus & obligandum. Et dato quod non semper derivetur ex jure naturali, satis videtur esse consensus majoris partis totius orbis, maximè pro bono communi omnium. Si enim post prima tempora creati orbis, aut reparari post diluvium, major pars hominum constituerit, ut legati ubique essent inviolabiles, ut mare esset commune, ut bello capti essent servi, & hoc ita expediret ut hospites non exigerentur: certè hoc haberet vim, etiam aliis repugnantibus.

Quarta Propositio, imò [5] si ex aliquo *IV. Prop.* Hispano nascentur ibi, liberi, & velint esse cives, non videtur quod possint prohiberi, vel à civitate vel commodis aliorum civium, dico ex parentibus habentibus illic domicilium. Probatur, quia hoc videtur esse *Probatur* de jure gentium, ut civis dicatur, & sit, qui natus est in civitate, ff. de appe, l. *cives*. Et confirmatur, quia cum homo sit animal *Confir.* civile, talis natus in una civitate, non est civis alterius civitatis. Si ergo non esset civis illius, non esset civis alicujus civitatis, per quod impediretur à jure naturali, & gentium:

Corollar.

um; Imo si qui vellent accipere domicilium in aliqua civitate illorum, ut accipiendo uxorem, vel alia ratione, qua alii peregrini solent fieri cives: non videtur quod possint prohiberi plusquam alii: & per consequens gaudere privilegiis civium sicut alii modò etiam subeant onera aliorum. Etiam facit, quod hospitalitas commendatur 1. Pet. 4. *Hospitales invicem.* & 1. ad Timoth. 3. de Episcopo, *Oportet Episcopum hospitalem esse*, unde e contrario nolle accipere hospites, & peregrinos, est de se malum.

V. Prop.

Quinta propositio, Si barbari velint prohibere Hispanos in supra dictis à jure gentium, puta vel commertio, vel aliis, quæ dicta sunt, Hispani primo debet ratione, & suasionibus tollere scandalum, & ostendere omni ratione se non venire ad nocendum illis, sed pacifice velle hospitari, & peregrinari sine aliquo incommodo illorum: & nō solum verbis, sed etiam ratione ostendere, juxta illud, *Omnia sapientes prius verbis experiri decet.* Quod si reddita ratione barbari nolunt acquiescere, sed velint vi agere Hispani possunt se defendere, & omnia agere ad securitatem suam convenientia: quia vim vi repellere licet. Nèc solum hoc, sed si aliter tuti esse non possunt, arces, & munitiones ædificare: & si acceperint injuria

jura, illam autoritate principis bello profe-
 qui, & alia belli jura agere. Probatur, quia *Prob.*
 caussa belli justæ est ad propulsandam & vin-
 dicandam injuriam, ut supra dictum est ex
Sanct. Thom. secunda secunda, qv. 40. sed bar-
 bari prohibentes à jure gentium Hispanos,
 faciunt eis injuriam: ergo si necesse sit ad
 obtinendum jus suum bellum gerere, pos-
 sunt hoc licitè facere. Sed est notandum, *Notandū.*
 quòd cum barbari isti sint natura meticu-
 losi, & aliàs stolidi, & stulti, quantumcunque
 Hispani velint eos demere à timore, & red-
 dere eos securus de pacifica conversatione:
 possunt adhuc meritò timere, videntes ho-
 mines cultu extraneos, & armatos, & mul-
 tò potentiores se. Et ideo si commeti hoc
 timore concurrunt ad exigendos, vel occi-
 dendos Hispanos, liceret quidem Hispanis
 se defendere servato moderamine inculpa-
 tæ tutelæ, nec alia belli jura liceret exercere
 in illos, putà vel parta victoria, & securitate,
 occidere illos, vel spoliare, vel occupare ci-
 vitates eorum, quia in illo casu sunt inno-
 centes, & meritò timent, ut supponimus.
 Et ideo debent Hispani se tueri: sed quan- *Bellum*
 tum fieri poterit cum minimo detrimento *non nun-*
 illorum, quia est bellum duntaxat defensi- *quam ex*
 vum. Nec est inconveniens, quòd cum ex *utraque*
 una parte est jus, & ex altera ignorantia in- *part. just.*

vincibilis, quòd sit bellum justum ex utraq[ue] parte. Ut sicut Galli tenent Burgundiam cum probabili ignorantia, credentes pertinere ad eos, Imperator autem noster habet jus certum ad illam provinciam, qui potest bello repetere, & illi illam defendere: sic potest contingere cum barbaris, & hoc multum est considerandum. Alia enim sunt jura belli adversus homines verè noxios, & injurios, & alia adversus innocentes & ignorantes. Sicut etiam aliter vitandum est scandalum Phariseorum, aliter pusillorum, & infirmorum.

VI. Prop. Sexta propositio, Si [7] omnib[us] tentatis, Hispani non possunt consequi securitatem cum barbaris, nisi occupando civitates, & subjiciendo illos, licitè possunt hoc etiam facere. **Prob.** Probatur, *Quia finis belli est pax, & securitas*: ut dicit August. ad Bonifacium. postquam autem (ut dictum est) licet Hispanis bellum suscipere, vel etiam si necesse sit, inferre. ergo licet omnia facere necessaria ad finem belli, scilicet ad obtinendam securitatem & pacem.

VII. Prop. Septima conclusio, Imo [8] si postquam Hispani omni diligentia, & re, & verbo ostendissent, non stare per eos, quin barbari pacificè, & sine damno suarum rerum agant, nihilominus barbari perseverarent in mali-

malitia sua , & contenderent ad perditionem Hispanorum : jam tunc non tanquam cum innocentibus , sed tanquam cum perfidis hostibus agere possent , & omnia belli jura in illos prosequi , & spoliare illos , & in captivitatem redigere , & dominos priores deponere , & novos constituere , moderatè tamen pro qualitate rei & injuriarum. Hæc *Prob. 1.* conclusio satis patet , quia , si licet eis bellum indicere. Ergo etiam jura belli persequi. Et confirmatur , quia non debent esse melioris conditionis , quia sunt infideles. Sed hæc omnia licerent adversus Christianos , si semel esset justum bellum : ergo etiam licent adversus illos. Item hoc est generale jus gentium , ut omnia capta in bello fiant victoris , ut habetur in l. *si quid in bello.* & l. *hostes.* ff. de captivis & c. *jus gentium.* l. i. distin. & expressius Institut. de rerum divisionibus. §. *Item quia ab hostibus.* ubi dicitur , quòd jure gentium , quæ ab hostibus accepimus , statim nostra fiunt , adeò ut etiam homines in nostram servitutem deducantur. Item , quia (ut Doctores dicunt *3.* in materia de bello) princeps , qui habet justum bellum , fit ipso jure judex hostium , & potest eos juridicè punire , & condemnare pro qualitate injuriarum. Et confir- *Confirm* mantur omnia supra dicta. Quia legati jure gen-

re gentium sunt inviolabiles, & Hispani sunt legati Christianorum: ergo barbari tenenture eos audire saltem benignè, & non repellere. Iste ergo est primus titulus quo Hispani potuerunt occupare provincias, & principatum barbarorum, modò fiat sine dolo & fraude, & non quærant fictas causas belli. Si enim barbari permetterent Hispanos pacificè negotiari apud illos, nullam possent Hispani ex hac parte prætere justam causam occupandi bona illorum non plusquam Christianorum.

- Secundus titulus le-* Alius titulus potest [9] esse, scilicet causa religionis Christianæ propagandæ: pro quo fit prima conclusio, Christiani habent jus prædicandi, & annuntiandi Evangelium in provinciis barbarorum. Hæc conclusio nota est ex illo, *Prædicare Evangelium omni creaturæ*, &c. Marc. ult.
- 1. Prop.* Item, *Verbum Domini non est alligatum*. 2. Thimot. 2. Secundò patet ex prædictis, quia si habent jus peregrinandi, & negotiandi apud illos, ergo possunt docere veritatem volentes audire, maximè de spectantibus ad salutem, & felicitatē multò magis, quàm de spectantibus ad aliquam humanā disciplinam. Tertiò, quia aliàs essent extra statum salutis, si non liceret Christianis ire ad eos ad annuntiandum Evangelium. Quarto, quia

Quia correctio fraterna est de jure naturali, sicut & dilectio cum ergo omnes illi sint, non solum in peccatis, sed extra statum salutis: ergo ad Christianos spectat corrigere & dirigere eos, imò videtur quod teneantur ad hoc. Quintò & ultimò. Quia sunt proximi, ut suprà dictum est, *sed unicuique mandavit Deus de proximo suo.* Eccles. 17. ergo spectat ad Christianos instruere illos ignorantes de summis rebus. s.

Secunda conclusio, Licet [10] sit commune & liceat omnibus, tamen Papa potuit hoc negotium mandare Hispanis, & interdicere omnibus aliis. Probatur, Quia *Probat 1.* licet, ut suprà dictum est, Papa non sit dominus temporalis, tamen habet potestatem in temporalibus in ordine ad spiritualia. ergo cum spectet ad Papam specialiter curare promotionem Evangelii in totum orbem, si ad prædicationem Evangelii in illis provinciis commodius possent principes Hispani dare operam, potest eis committere, & interdicere omnibus aliis: & non solum interdicere prædicationem, sed etiam commercium, si hoc ita expediret ad religionis Christianæ propagationem, quia potest ordinare temporalia, sicut expedit spiritualibus. Si ergo hoc ita expedit; ergo spectat ad auctoritatem & potestatem summi pon-

pontificis. Sed omnino videtur ita expedire, eò quod si indiscriminatim ex aliis provinciis Christianorum concurrerent ad illas provincias, possent se invicem facile impedire, & excitare seditiones: unde & tranquillitas impediretur, & turbaretur negotium fidei, & conversio barbarorum.

Prob. 2. Præterea cum principes Hispani suis auspiciis & sumptibus primi omnium eam navigationem susceperint, & tam feliciter novum orbem invenerint: justum est, ut ea peregrinario aliis interdicatur, ipsi solum fruantur invenlis. Sicut etiam pro pace conservanda inter principes, & religione amplificanda, potuit Papa provincias Saracenorum inter principes Christianos ita distribuere, ne alius in alterius partes transeat: sic etiam posset pro commodo religionis principes creare, & maximè ubi antea nulli fuissent principes Christiani.

III. Prop. Tertia conclusio, Si [11] barbari permittant Hispanos liberè & sine impedimento, prædicare Evangelium, sive illi recipiant fidem, sive non: non licet hac ratione intendere illis bellum, nec aliàs occupare terras illorum. Hæc probata est superiùs in proximè antecedenti sectione, ubi confutavimus quartum titulum: & per se patet, quia nunquam est bellum justum, ubi nulla præ-

præcessit injuria, secunda secundæ, q. 40. a. 1. *IV. Prop.*

Quarta conclusio, [12] Si barbari, sive ipsi domini, sive etiam multitudo impedi-
ant Hispanos quo minus liberè annuntient
Evangelium, Hispani, reddita prius ratione
ad tollendum scandalum, possunt illis in-
vitis prædicare, & dare operam ad conver-
sionem gentis illius: & si sit opus, propter
hoc bellum suscipere, vel inferre, quo usque
barbari opportunitatem & securitatem præ-
dicandi Evangelium. Et idem est judici-
um, si etiam permittentes prædicationem,
impediant conversionem, occidentes, vel
aliter punientes conversos ad Christum, vel
minis, aut terroribus alios deterrentes.
Hæc patet, Quia faciunt in hoc barbari in-*Prob. 1.*
juriam Hispanis, ut patet ex dictis; habent
enim justam belli causam. *2.* Secundo etiã.
Quia impediretur commodum ipsorum
barbarorum, quod principes eorum non
possunt impedire justè. Ergo in favorem
illorum qui opprimuntur & patiuntur inju-
riam, possunt Hispani movere bellum, ma-
ximè cum res sit tanti momenti. Ex qua *Corollar.*
etiam conclusione patet, quod etiam hac
ratione, si aliter negotium religionis pro-
curationum potest licet Hispanis occupare
terras, & provincias illorum, & novos do-
minos creare, & antiquos deponere, &
pro-

prosequi jure belli, quæ in aliis bellis justis licite fieri possent, servato semper modo, & ratione, ne ultra procedatur, quam opus sit: & potius de proprio jure remittatur, quam aliud quod licet, invadendo, & semper omnia diligendo magis ad commodum barbarorum, quam ad proprium quæstum.

Notandū. Sed considerandum valde est quod Paul. dicit 1. ad Cor. 6. *Omnia mihi licent, sed non omnia expediunt.* Hæc enim omnia quæ dicta sunt, intelliguntur per se loquendo. Fieri enim potest, ut per hæc bella, cædes & spolia, potius impetitetur conversio barbarorum, quam quæ reretur, & propagaretur. Et ideo hoc in primis cavendum est, ne offendiculum ponatur Evangelio. Si enim ponatur, cessandum esset ab hac ratione Evangelizandi, & alia quærenda esset. Sed nos ostendimus quod per se hæc licent. Ego non dubito quin opus fuerit vi & armis ut possent Hispani illic perseverare: sed timeo ne ultra res progressa sit, quam jus fasque permittebant. Iste ergo potuit esse secundus titulus legitimus, quo barbari potuerunt cadere inditionem Hispanorum. Sed semper habendum est præ oculis quod statim dictum est; ne hoc quod per se licitum est, reddatur malum per accidens: quia bonum est ex integra causa, malum autem

autem ex singulis defectibus, ex *Aristot. 3. Ethico. & Dionysio 4. c. de divinis nominibus.*

Alius titulus potuit [12] esse, qui deri- *Tertius*
vatur ex isto, & est: Si qui ex barbaris con- *titulus*
versi sunt ad Christum, & principes eo- *legitimus.*
rum, vi aut metu, volunt eos revocare ad
idololatriam, Hispani hac ratione, etiam
possunt, si aliàs fieri non potest, movere bel-
lum, & cogere barbaros ut desistant ab illa
injuria, & contra pertinaces jure belli per-
sequi, & per consequens aliquando domi-
nos deponere, sicut in aliis bellis justis. &
iste potest poni tertius titulus, & non solum
titulus religionis, sed amicitiae & societatis
humanæ. Ex hoc enim quod aliqui bar- *Prob.*
bari sint conversi ad religionem Christianã,
sunt facti amici & socii Christianorum: &
debemus operari bonum ad omnes, maxi-
mè autem ad domesticos fidei, *ad Galat. 6.*

Alius titulus potest esse, [14] Si bona *Quartus*
pars barbarorum conversi essent ad Chri- *titulus le-*
stum, sive jure, sive injuria, id est, dato *gitimus.*
quod minis, aut terroribus, vel aliàs non
servatis servantis, dummodo verè essent
Christiani, Papa ex rationabili causa posset
vel ipsis petentibus, vel etiam non petenti-
bus, dare illis principem Christianum, &
auferre alios dominos infideles. *Probat.*
Quia si ita expediret ad conservationem

religionis Christianæ, quia timetur ne sub dominis infidelibus apostatæ fiant, id est deficiant à fide vel illa occasione graventur à suis dominis : in favorem fidei Papa potest mutare dominos. Et confirmatur, quia (ut Doctores dicunt) & expresse *S. Thom. 2. 2. q. 10. artic. 10.* Ecclesia posset omnes servos Christianos, qui serviunt in fidelibus, liberare, etiam si aliàs essent legitime captivi. & hoc expresse dicit Innocenti. in d. c. *super his.* de voto. Ergo magis poterit liberare alios subditos Christianos, qui non

Confirm. I. sunt tam astricti, sicut servi. Et confirmatur, Quia tantum, vel plus, tenetur uxor viro, quantum subditus domino; cum illud vinculum sit juris Divini, hoc autem non : sed in favorem fidei liberatur uxor fidelis à viro infideli, si maritus ei molestus est pro religione, ut patet ex Apostolo 1. *ad Cor. 7.* & ex c. *quanto.* de divotiis. Imò ita nunc consuetum est, ut ipso facto, quod alter conjugum convertitur ad fidem, sit liber ab altero conjugum infideli. ergo etiam Ecclesia in favorem fidei, & ad vitandum periculum, potest liberare omnes Christianos ab obedientia, & subjectione dominorum infidelium, secluso scandalo. Et ponitur iste

Quintus quartus titulus legitimus.

titul. leg. Alius titulus posset [15] esse propter tyranni-

rannidem vel ipsorum dominorum apud barbaros, vel etiam propter leges tyrannicas in injuriam innocentum; puta quia sacrificant homines innocentes, vel alias occidunt indemnatos ad vescendum carnibus eorum. Dico etiam, quod sine auctoritate Pontificis possunt Hispani prohibere barbaros ab omni nefaria consuetudine & ritu, quia possunt defendere innocentes à morte injusta. Hoc probatur, quia unicuique mandavit Deus de proximo suo: & illi omnes sunt proximi: ergo quilibet potest defendere illos à tali tyrannide & oppressione & hoc maximè spectat ad principes. Item probatur proverb. 24. *Erue eos, qui ducuntur ad mortem, & qui trahuntur ad interitum, liberare neccesse.* Nec hoc solum intelligitur cum actu ducuntur ad mortem, sed etiam possunt cogere barbaros, ut cessent à tali ritu: & si nolunt, hac ratione possunt eis bellum inferre, & jure belli eos persequi, si aliter tolli non potest sacrilegus ritus possunt mutare dominos, & novum principatum inducere. Et quantum ad hoc habet verum illa opinio *Inno. & Archiep.* quod pro peccatis contra naturam possunt puniri. Nec obstat quod omnes barbari consentiant in hujusmodi leges, & sacrificia,

Prob. 1.

Probat. 2.

cia, nec volunt se in hoc vindicari ab Hispanis, in his enim non ita sunt sui juris, ut possint seipfos, vel filios tradere ad mortem, & iste posset esse quintus titulus legitimus.

Sextus titulus legitimus.

Prob.

Alius titulus posset esse [16] per veram & voluntariam electionē, puta si barbari ipsi intelligentes & prudentem administrationem, & humanitatē Hispanorum, ultrò velent accipere in principem Regem Hispaniæ tam domini, quàm alii: Hoc enim fieri posset & esset legitimus titulus, etiam de lege naturali: quælibet enim Respublica potest sibi constituere dominum, nec ad hoc esset necessarius consensus omnium, sed videtur sufficere consensus majoris partis. Quia sicut aliàs disputavi in his, quæ spectant ad bonum Reipublicæ illa, quæ constituuntur à majori parte, tenent, etiam aliis contradicentibus: aliàs nihil posset geri pro utilitate Reipublicæ, cum difficile sit, ut omnes conveniant in unam sententiam. Unde si in aliquâ civitate, aut provincia major pars esset Christianorum, & illi in favorem fidei, & pro bono communi velent habere principem Christianum, credo quòd possent eligere, aliis invitis, etiam reliquendo alios dominos infideles: & dico quòd possent eligere principem, non solum sibi, sed toti Reipub, sicut & Galli pro bono

bono suæ reipublicæ mutaverunt principes & ablato regno à Childerico , tradiderunt Pipino , Caroli magni patri : qvam mutationem Zacharias Pontifex comprobavit, & hic potest poni sextus titulus.

Alius titulus esse potest , caussa [17] so- *Septimus*
 ciorum & amicorum. Cùm enim ipsi barba- *titulus le-*
 ri inter se gerant aliquando legitima bella, *gitimus.*
 & pars, quæ injuriam passa est habet jus in-
 ferendi bellũ , potest accersere Hispanos in
 auxilium , & præmia victoriæ illis comũni-
 care, ut ferũtur fecisse Talcalthedani contra
 Mexicanos , qṽ cum Hispanis composue-
 runt , ut eos juvarent ad debellandos Me-
 xicanos : haberent autem quicquid jure
 belli ad eos spectare poterat. Qvòd enim *Prob.*
 hæc sit caussa justa belli pro sociis & amicis,
 non est dubium , ut etiam declarat Cajeta
 secunda secundæ, q. 40. artic. 1. Qvia æqvè
 potest Respublica advocare extraneos ad
 vindicandum inimicos contra extraneos
 malefactores. Et confirmatur , qvia pro- *Confirm.*
 fectò hac maximè ratione Romani dilata-
 verunt imperium suum, dum scilicet sociis
 atqve amicis auxilia præstabant, & ea occa-
 sione justa bella suscipientes , jure belli in
 possessionem novarum provinciarum ve-
 niebant, & tamen imperium Romanum
 approbatur tanquam legitimum à B. *Aug.*

libro 5. de civitate DEI, & à S. Tho. opusculo
 21. Et sylvester Constantinum magnum
 pro imperatore habuit, & Ambros. Theo-
 dos. Non videtur autem qvo alio juridico
 titulo venerint Romani in possessionem or-
 bis, nisi jure belli, cujus maximæ occasio-
 nes fuerūt defensio, & vindicatio sociorum.
 Sicut & Abraham ad vindicandum regem
 Salem, & alios reges qvi cum eo fœdus pet-
 cusserant, dimicavit contra quatuor reges
 illius regionis. Genes. 14. à quibus ipse
 nullam injuriam accepit. Et iste videtur
 septimus & ultimus titulus, qvo potuerunt,
 aut possent venire barbari eorumque pro-
 vincia in possessionem & dominium Hi-
 span.

Octavus Alius titulus possët [18.] non quidem af-
titulus feri, sed revocari in disputationem, & vide-
dubius. ri aliquibus legitimus. De qvo ego nihil
 affirmare audeo, sed nec omnino condem-
 nare: & est talis, Barbari enim isti licet, ut
 supra dictum est, non omnino sint amen-
 tes, tamen etiam parum distant ab amenti-
 bus: ita videtur, quòd non sint idonei ad
 constituendam vel administrandam legiti-
 mam Rempublicam, etiam inter terminos
 humanos & civiles. Unde nec habent le-
 ges convenientes, neqve magistratus, imò
 nec sunt satis idonei ad gubernandam rem
 fami-

familiarem: unde etiam carent & literis, & artibus, non solum liberalibus, sed etiam, mechanicis, & agricultura diligenti, & opificibus, & multis aliis rebus commodis, imò necessariis ad usus humanos. Posset ergo quis dicere, quòd pro utilitate eorum posset principes Hispani accipere administrationem illorum, & constituere illis per oppida præfectos, & gubernatores: imò etiam illis dare novos dominos, dummodo constaret hoc illis expedire. Hoc inquam posset suaderi, quia si omnes essent amentes, non dubium est, quin hoc esset non solum licitum, sed convenientissimum: imò tenerentur ad hoc principes, sicut, si omnino essent infantes. Sed videtur quantum ad hoc eadem ratio de illis & de amentibus; quia nihil, aut paulò plus valent ad gubernandum se ipsos, quam amentes: imò quam ipsæ fere & bestia, nec mitior cico quam fera, nec penè meliori utuntur: ergo eodem modo posset tradi ad gubernationem sapientiorum. Et confirmatur hoc apparenter. Nam si fortuna aliqua omnes adulti perirent apud illos, manerent pueri, & adolescentes habentes quidè aliqualem usum rationis, sed intra annos pueritiæ, & pubertatis: videtur profecto, quod posset principes recipere curam illo-

Ratio verisimilis.

Confirm.

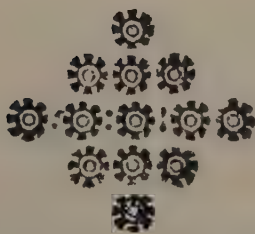
rum, & gubernare illos quamdiu essent in tali statu. Quod si hoc admittitur, videtur certè non negandum, quin idem fieri posset circa parentes barbaros supposita hebetutine, quam de illis referunt, qui apud eos fuerunt, quæ multò in quibus, major est, quam apud alias nationes sit in pueris. Et certè hoc posset fundari in præcepto charitatis, cum illi sint proximi nostri, & teneamur pena illorum curare, & hoc (ut dixi) sit sine assertione propositum, & etiam *cum illa limitatione, ut fieret propter bona & utilitatem eorum, & non tantum ad questum Hispanorum.* In hoc enim est totum periculum animarum & salutis: & ad hoc posset etiam prodesse illud, quod supra dictum est, quod aliqui sunt natura servi: nam tales videntur omnes isti barbari, & sic possent ex parte gubernari ut servi.

Object.

Sed ex tota disputatione videtur sequi, quod si cessarent omnes isti tituli, ita ut barbari nullam rationem justì belli darent, nec vellent habere Hispanos principes, &c. quod cessaret tota illa peregrinatio, & commercium cum magna jactura Hispanorum, & etiam proventus principum magnum detrimentum acciperent, quod non esset ferendum. Respondetur primò, Commercium non oporteret ut cessaret, quia ut jam
decla-

Respons.

declaratum est multa sunt apud barbaros, quibus ipsi abundant, & per commutationem possent Hispani advehere. Item multa etiam, quæ ipsi pro desertis habent, vel sunt communia omnibus volentibus occupare: & Lusitani magnum commercium habent cum similibus gentibus, quas non subjecerunt, & cum magno comodo. *Respons. 2* Secundo, Fortasse regii reditus non minores essent nam æquè justè posset imponi vestigal super aurum & argentum quod à barbaris reportaretur, vel ad quintam partem, vel etiam ad majorem pro rei qualitate: & meritò, cum navigatio fuerit à principe inventa, & sua autoritate essent tuti negotiatores. Tertio patet, quòd jam postquam *3. patet.* ibi facta est conversio multorum barbarorum, nec expediret, nec liceret principi omnino dimitteret administrationem illarum provinciarum.



REVERENDI PA- TRIS, FRATRIS FRAN- CISCI A VICTORIA

*De Indis, sive de jure belli Hispanorum
in barbaros,*

RELECTIO POSTERIOR. SUMMA.

1. Christianis licet militare, & bella gerere.
2. Bellum gerendi, aut indicendi, penes quem sit autoritas.
3. Bellum defensivum, quilibet possit suscipere & gerere, etiam privatus.
4. Invasus à latrone, aut inimico, an possit repercutere invasorem, si possit fugiendo evadere.
5. Respublica quaelibet habet auctoritatem indicendi, & inferendi bellum.
6. Princeps eandem auctoritatem habet ad indicendum & inferendum bellum, quam Respublica.
7. Respublica quid sit, & quis propriè dicatur Princeps.
8. Respublicæ, aut principes plures, si habeant unum communem dominum, aut principem, an possint per se inferre bellum sine auctoritate superioris principis.
9. Re-

9. *Reguli, siue Principes, qui non præsum Reipub. perfectæ, sed sunt partes alterius Reipub. non possunt bellum inferre, aut gerere.
Et quid dicendum de civitatibus.*
10. *Belli justî quæ possit esse ratio, & caussa.
Et quod justî belli caussa non sit diuersitas religionis, probatur.*
11. *Imperii amplificatio non est iusta causa belli.*
12. *principis gloria propria, aut aliud commodum non est belli iusta caussa.*
13. *Injuria accepta est unica & sola caussa iusta ad inferendum bellum.*
14. *Injuria quælibet, & quantavis non sufficit ad bellum inferendum.*
15. *Bello iusto existente, licet omnia facere, quæ ad defensionem boni publici sunt necessaria.*
16. *Bello iusto licet recuperare omnes res preditas, & illarum partem.*
17. *Bello iusto licet occupare ex bonis hostium impensam pelli, & omnia damna ab hostibus iniuste illata.*
18. *Princeps justî pelli recuperatis rebus ab hostibus, quid ulterius possit facere.*
19. *Principi justî belli licet parta victoria, recuperatis rebus, ac pace etiam & securitate habita, vindicare injuriam ab hostibus
acce-*

acceptam, & animadvertere in hostes, & punire illos pro injuriis illatis.

20. Bellum ut dicatur justum, non semper est satis, principem credere se habere justam causam.

21. Belli iustitia summopere, & magna cum diligentia examinanda est.

22. Subditi, an teneantur examinare causam belli. Et quomodo si subdito constet de injustitia belli, non liceat ei militare, etiam si Princeps imperet.

23. Subditi si habeant conscientiam de injustitia belli, non licet sequi bellum, si ve errent, si ve non.

24. Senatores, reguli, & universaliter omnes, qui admittuntur, vel vocati, vel etiam ultro venientes ad consilium publicum, vel regis tenentur injusti belli causam examinare.

25. Belli causas examinare qui non teneantur, sed possint fide adhibita majoribus, licite militare.

26. Subditos militantes quando non excuset ignorantia de injustitia belli.

27. Belli iustitia si sit dubia, quid faciendum. Et quomodo si Princeps unus sit in
legi-

legitimâ possessione, manente dubio non possit aliis bello & armis repetere.

28. *Si sit civitas, aut provincia, de qua dubitatur, an habeat legitimum possessorem, maximè si esset deserta morte legitimi domini, &c. quid in tali casu sit agendum.*
29. *Dubitans de jure suo, etiam si pacificè possideat, quomodo examinare teneatur diligenter causam, si fortè possit certum scire, vel pro se, vel pro alio.*
30. *Examinata causa quamdiu rationabiliter perseverat dubium, legitimus possessor non tenetur cedere possessioni, sed potest licitè retinere.*
31. *Subditis non solum licet in bello defensivo in re dubia sequi principem suum in bellum, sed etiam in bello offensivo.*
32. *Bellum an possit ex utraque parte esse justum. Et quomodo seclusa ignorantia hoc non possit contingere.*
33. *Princeps, sive subditus, qui ex ignorantia sequutus est bellum injustum, si postea constiterit ei de injustitia belli, an teneatur restituere.*
34. *Innocentes interficere in bello, an liceat.*
35. *Innocentes interficere, nunquam per se, & ex intentione licet.*
36. *In-*

36. Interficere an liceat infantes & feminas in bello contra Turcas. Et quid dicendum de agricolis apud Christianos, cogatis, peregrinis, hospitibus, & clericis.
37. Interficere innocentes per accidens, etiam scienter, aliquando licet, & aliquando non.
38. Innocentes, à quibus in futurum imminet periculum, an liceat interficere.
39. Spoliare an liceat innocentes inter hostes. Et quibus rebus sint spoliandi.
40. Bellum si satis commodè geri potest non spoliando agricolas, aut alios innocentes, videtur non licere eos spoliare. Et quid dicendum de peregrinis, & hospitibus qui sunt apud hostes.
41. Hostes si nolint restituere res injuria ablatas, & non possit, qui est læsus, aliunde recuperare, quomodo possit undecunque satisfactionem capere, siue à nocentibus, siue ab innocentibus.
42. Innocentes, & pueros, esto quòd non sint interficiendi, an saltem liceat ducere in captivitatem, & servitutem.
43. Obsides, quæ vel tempore induciarum, vel peracto bello ab hostibus recipiuntur, utrum interfici possint, si hostes fidem frangerent, & convenis non starent.
44. In-

44. *Interficere an liceat omnes in bello nocentes.*
45. *Interficere, licet indifferenter omnes, qui in actuali conflictu praelii, vel in oppugnatione aut defensione civitatis contra pugnant, & quandiu res est in periculo.*
46. *Interficere licet nocentes, parva victoria, & rebus jam extra periculum positis.*
47. *Interficere non semper licet omnes nocentes, solum ad vindicandum injuriam.*
48. *Interficere aliquando, & licet, & expedit omnes nocentes, & hoc maxime in bello contra infideles. Et quid in bello contra Christianos.*
49. *Captivos, aut deditos an liceat interficere, supposito, quod etiam fuerunt nocentes.*
50. *Capta in bello justo, utrum fiant capientium & occupantium. Et quomodo capta injusto bello, usque ad sufficientem satisfactionem rerum ablatarum per injuriam, & etiam impensarum, fiant occupantium.*
51. *Mobilia omnia quomodo jure gentium fiant occupantis, etiam si excedant compensationem damnorum.*
52. *An liceat civitatem permittere militibus*
in

in prædam. Et quomodo non sit illicitum, sed & quandoque necessarium.

53. Militibus non licet prædas agere, aut incendia facere sine autoritate, aliàs tenerentur ad restitutionem.
54. Occupare licet, & tenere agrum, arces, & oppida hostium, quantum necessarium fuerit ad damnorum illatorum compensationem
55. Occupare licet ab hostibus, & tenere arcem aliquam, aut civitatē pro paranda securitate, & vitando periculo, aut pro defensione ut tollatur ab hostibus occasio nocendi, &c.
56. Hostes mulctare parte agri, licet ratione injuriæ illata, & nomine pœnæ, hoc est, ad vindictam. Et quomodo hac etiam ratione potest arx, aut oppidum cum moderamine occupari.
57. Tributa an liceat victis hostibus imponere.
58. Principes hostium, an liceat deponere, & novos ponere & constituere, vel sibi principatum restituere. Et quomodo non passim, & ex quacunque causa belli justī hoc liceat facere.
59. Principes hostium quando legitimè possent deponi, ostenditur.
60. Canones, seu regulæ belligerandi describuntur.

Quia



Via possessio & occupatio provinciarum illorum barbarorum quos Indos vocant, videtur tandem maximè jure belli posse defendi: ideo postquam in relectione priori, de titulis disputavi, quos Hispani possunt prætere ad illas provincias obtinendas, siue justis, siue in justis: visum est de jure belli brevè disputationem habere, ut hæc relectiones absolutiores videantur. Sed quia temporis angustia pressi, non poterimus hîc tractare omnia, quæ in hac materia possent disputari, non licuit extendere calamum pro amplitudine & dignitate argumenti & materiæ, sed quantum brevitatis temporis patiebatur. Itaque solum notabo propositiones præcipuas in hac materia cum probationibus brevissimis, abstinens à multis dubiis, quæ in hanc disputationem conferri possent. Tractabo autem quatuor quæstiones principales. Prima, an omnino Christianis sit licitum bella gerere. Secunda, apud quem sit autoritas, aut gerendi, aut indicendi bellum. Tertia, quæ possint, & debeant esse causæ justæ belli. Quarta, quid in bello justo, & quantum liceat in hostes.

*Quatuor
questio-
nes prin-
cipales
tractan-
de.*

Quantum ad primum, posset videri, quod omnino bella sint interdicta Christianis: *Prima
questio
principa-
lis.*

nis: Prohibitum enim videtur eis se defendere, juxta illud. *Non vos defendentes, Ratio pro charissimi, sed date locum ira.* Rom. 12. & Dq-
parte al- minus in Evangelio, *Si quis te percusserit in*
tera quæ- *dexteram maxillam tuam, præbe illi & alteram.*
stiones. Et, ego dico vobis non resistere malo Matth. 5. &
 Matth. 26. *Omnes qui acceperint gladium,*
gladio peribunt. Neque satis videtur respon-
 dere, quòd omnia hæc non sunt in præce-
 pto, sed in consilio, satis enim magnum in-
 conveniens esset, si bella omnia, quæ à
 Christianis suscipiuntur, sunt contra con-
 silium Domini. In contrarium est senten-
 tia omnium doctorum, & usus receptus in
 Ecclesia.

Pro quæstionis explicatione notandum
 est, quòd licet inter catholicos satis conve-
 niat de hac re, *Lutheri sententia.* *Lutherus tamen, qui nihil in-*
contaminatum reliquit, negat Christianis et-
 iam adversus Turces licere arma sumere:
 innixus tum locis Scripturæ suprà positis,
 tum etiam, quòd si Turcæ invadant Chri-
 stianitatem, illa est voluntas Dei, cui resi-
 stere non licet. In qua tamen re non ita
 potuit imponere Germanis hominibus ad
 arma natis, sicut in aliis suis dogmatibus.
Aqua nō Et Tertullianus non adeò videtur abhor-
videtur rere ab hac sententia, qui libro de corona
Tertullia. militis, disputat, an in totum Christianis
ab horre-
re. mili-

militia conveniat. Et tandem profecto in hanc sententiam declinare videtur, ut Christiano militare interdictum putet. Cui inquit, *ne litigare quidem liceat.*

Sed relictis extraneis opinionibus, sit re- *Bespo. au-*
sponsio ad quæstionem unica conclusione, *tor unica*
licet [1] Christianis militare & bella gerere. *conclusio-*
Hæc conclusio est Augustin. in multis lo- *ne.*
cis. Nam contra Faustum, *a* & libro 83. *b* a Præser-
quæstionum, & de verbis *c* Domini, in ser- *tū lib. 22.*
mone de puero *d* Centurionis, & ad Bonifa- *b quæst. 31*
cium *e* Epistola, disertè astruit. Et pro- *c Serm. 19.*
batur conclusio, ut probat August. ex ver- *Prob. 1.*
bis Joh. Baptistæ Luc. 3. ad milites, *neminem d* Est ser-
concutiatis, *nemini injuriam feceritis. Quod si mon. de*
Christiana disciplina (inquit f August.) *omni. verbis Do*
nobella culparet hoc potius consilium salutis pe- *mini.*
tentibus in Evangelio daretur, ut abjicerent *e* Videtur
arma, sequemilitia omnino subtraherent. *Di. Epist. 205.*
Etum est autem eis, *neminem concutatis, con-* ad Boni-
renti estote stipendiis vestris. Secundo pro- *facium*
batur ratione, scilicet 2. 2. quæst. 40. articul. *Comitem.*
1. Licet stringere gladium, & armis uti ad- *f Videtur*
versus interiores male factores, & seditio- *esse locus*
sos cives, secundum illud Roman. 13. *Non si. lib. 22. cō-*
ne causa gladium portat, minister enim DEI tra Fan-
est vindex iram ei, qui malè agit: ergo eti- *stum. c. 74*
am licet uti gladio, & armis adversus hostes *2*
exteriores. Unde principibus dictum est.

3.

Pfal. 18. *Eripite pauperem , & egenum manu peccatoris liberate.* Tertiò, in lege naturæ hoc licuit, ut patet de Abraham, qui pugnavit contra quatuor Reges. *Genes. 14.* Item in lege scripta, ut patet de David & Machab. Sed *lex Evangelica* nihil interdicat; quod jure naturali licitum sit, ut S. Tho. eleganter tradit 1.2. q. 107. art. ult. unde & dicitur lex libertatis, Jacob. 1. & 2. ergo quod licebat in lege naturali & scripta, non minus licet in lege Evangelica.

4.

*Et sequē-
tes perti-
nent ad
bellum of-
fensivum.*

Et quia de bello defensivo revocari in dubium non potest, quia vim vi repellere licet. ff. de justitia & jure, l. vim vi Quartò probatur etiam de bello offensivo, id est in quo non solum defenduntur, aut etiam reipetuntur res, sed ubi petitur vindicta pro injuria accepta. Probatur in quam auctoritate Augustin. libro 83. quæstion. & ha-

*Videatur
locus hic
sumptus
ex quæst.
super 10-
sueq. 10.*

beretur c. dominus. 23. q. 2. *Iusta bella solent diffiniri, quæ ulciscuntur injurias, si gens vel civitas plectenda est, quæ vindicare neglexit, quod à suis improbè factum est, vel reddere quod per injuriam ablatum est.* Probatur etiam quinto de bello offensivo: quia bellum etiam

5.

devenfivum geri commodè non potest, nisi etiam vindicetur in hostes, qui injuriam fecerunt aut conati sunt facere, fierent enim hostes audaciores, ad iterum invatendum

dum nisi timore pœnæ deterrerentur ab injuria. Probatur sexto, Quia finis belli est pax & securitas Reip. ut Augustinus in-
 6. *Locis an-*
 qvit de verbo Domini, & ad Bonifacium; *te citatis.*
 sed non potest esse securitas in Republica nisi hostes coërceantur motu belli ab injuria: esset enim omnino iniqua conditio belli, si hostibus invadentibus injustè Rempubli-
 cam, solum liceret Reipublicæ avertere hostes nec possent ulterius prosequi. Pro-
 7.
 batur septimò ex fine & bono totius orbis; Prorsus enim orbis consistere in felici statu non posset, imò esset rerum omnium pessima conditio, si tyranni quidem & latrones, & raptores possent impune injurias facere, & opprimere bonos, & innocentes, nec liceret vicissim innocentibus animadvertere in nocentes. Probatur octavò & ultimò
 8.
 quia in moralibus potissimum argumentū est ab autoritate & exemplis sanctorum, & bonorum virorum, qui non solum bello defensivo tutati sunt patriam resqve suas, sed etiam bello offensivo persecuti sunt injurias ab hostibus acceptas, vel attentatas, ut patet de Ionatha & Simone, 1. Machæ. 9. qui vindicaverunt mortem Iohannis fratris sui contra filios Iambri. Et in Ecclesia Christiana patet de constantino magno, Theodosio majore, & aliis clarissimis &

Christianissimis imperatoribus, qui multa bella utriusque generis gesserunt, cum haberent in consiliis sanctissimos & doctissimos Episcopos.

Secunda Secunda quaestio, apud [2] quem sit auto-
quæst. ritas gerendi, aut indiendi bellum. Pro qua

Principalis sit prima propositio, Bellum (3) defensivum

J. Prop. quilibet potest suscipere & gerere, etiam

privatus. Hæc patet, Nam vim vi rebel-

lere licet. ff. ubi supra. unde hoc bellum

quilibet potest gerere sine autoritate cujus-

cunque alterius, non solum pro defensione

personæ, sed etiam rerum, & bonorum.

Sed circa istam conclusionem dubitatur

Dubium. primò, An [4] invasus à latrone, aut ini-

mico, possit repercutere invasorem, si pos-

Archie- sit fugiendo evadere. Et Archiepiscopus

piscopi quidem respondet, quod non. Quia jam

sententia. non est defensio cum moderamine inculpa-

tæ titulæ: quilibet enim tenetur se defen-

dere quantum poterit cum minino detri-

mento invasoris. Si ergo resistendo oportet

aut occidere, aut graviter vulnerare

invasorem, potest autem se liberare fu-

giendo, videtur quod teneatur. Sed Pa-

Panorm. norm. c. olim de restit. spoliat. distinguit si

sententia. enim invasus magnum dedecus subiret fu-

giendo, non tenetur fugere sed potest re-

percutiendo, injuriam repellere: si vero

non

non faceret jacturam famæ, aut honoris, ut monachus, aut rusticus invasus à nobili, & forti viro, tenetur potius fugere. *Bartol.* autem in l. 1. ff. de pœnis & in l. furem. ff. de sententia. sicariis, indistinctè tenet, quod licet se defendere, nec tenetur fugere: quia fuga est injuria. l. item apud Labbeonem. ff. de injuriis si autem pro rerum defensione licitum est armis resistere, ut patet in d. c. olim. & in c. dilecto. de sententia excom. lib. 6. multò magis pro arcenda injuria corporali, quæ major est, quàm rerum jactura. l. in servorum. ff. de pœn. Et hæc opinio potest probabiliter & satis tutò teneri, maximè cum jura civilia hoc concedant, ut in dicta. l. furem. *Sequitur* autor *Bartoli* sententiâ. autoritate autem legis nemo peccat: quia leges dantius in foro conscientiæ. Unde etiam si jure naturali non liceret occidere pro defensione rerum, videtur quod jure civili factum sit licitum: & hoc revera secluso scandalo, videtur licere non solum laico, sed etiam clerico, religioso viro.

Secunda propositio, quælibet [5] Respu-*II. Prop.* blica habet auctoritatem indicendi, & inferendi bellum. Pro probatione est notandû, *Discrimẽ* quod differentia est quantum ad hoc inter *inter pri-* privatam personam, & Rempublicam: quia *vatã per-* privata persona habet quidem jus defen- *sonam &* dendi se, & sua, ut dictum est: sed non ha- *Rempubl*

bet jus vindicandi injuriam, imò nec repetendi ex intervallo temporis res ablatas. Sed defensio oportet ut fiat in præsentis periculo, quod jurisconsulti dicunt in continenti.

Opinio cessat licentia belli. Credo tamen, quod
autoris. per injuriam percussus possit statim repercutere, etiamsi in vasor non deberet ultra progredi. Sed ad vitandam ignominiam & dedecus, posset qui colaphum (exempli gratia) accepit, gladio statim repercutere, non ad sumendam vindictam, sed (ut dictum est) ad vitandam infamiam, & ignominiam. Sed Respublica habet auctoritatem non solum defensionis, sed etiam vindicandi se, & suos, persequendi injurias. Quod probatur, quia ut Aristoteles tradit tertio. lib. Politicorum, Respub. debet esse sibi sufficiens: sed non posset sufficienter conservare bonum publicum, & statum Reipub. si non possit vindicare injuriam, & animadvertere in hostes fierent enim (ut supra dictum) mali promptiores & audaciores ad injuriam inferendam, si possent, Impune hoc facere; & ideo necessarium est ad commodam rerum mortalium administrationem, ut hæc auctoritas concedatur

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autoritas Tertia propositio; eandem [6] auctoritatem

tem habet quantum ad hoc princeps, quam *principis*, Respublica. Hæc est sententia *Angust. lib. quæ Rei-* 22. contra *Faufum*, Ordo, inquit, *naturalis publ. in* mortalium paci accommodatus, hoc poscit, *us* *hoc re.* suscipiendi belli autoritas, atque consilium penes principes sit. Et ratione probatur, quia princeps non est nisi ex electione Reip. ergo gerit vices, & autoritatem illius: imò jam ubi sunt legitimi principes in Republ. tota autoritas residet penes principes, neque sine illis aliquid publicè aut bello, aut pace geri potest.

Sed tota difficultas est, quid (7) est Respublica, & quis propriè dicitur princeps? Ad hoc breviter respondetur, quòd Respub. propriè vocatur perfecta communitas: sed hoc ipsum est dubium quæ sit perfecta communitas. Prò quo notandum, quod perfectum idem est quod totum dicitur, enim imperfectum, cui aliquid deest, & contrarii perfectum, cui nihil deest, Est ergo perfecta Respublica, aut communitas quæ est per se totum, id est, quæ non est alterius Reip. pars, sed quæ habet proprias leges, proprium consilium, & proprios magistratus, quale est regnum Castellæ, & Aragoniæ, principatus Venetorum, & alii similes. Nec enim obstat quin sint plures principatus & Respub. perfectæ sub uno

principe. Talis ergo Respub. aut princeps illius, habet auctoritatem indicendi bellum, & solum talis.

Dubium. Sed ex hoc ipso dubitari meritò potest, an [8] si plures hujusmodi Respublicæ, aut principes habeant unum communem dominum, aut principem, an possint per se inferre bellum sine auctoritate superioris principis. Et respondeo, quòd sine dubio possunt, ut Reges, qui sunt subjecti Imperatori, possunt invicem belligerare, non expectata auctoritate imperatoris: quia (ut dictum est) Respub. debet sibi esse sufficiens, nec sufficeret sibi sine tali facultate.

Corollar. Ex quibus sequitur, & patet, quòd (9) alii reguli, sive principes, qui non præsunt Reip. perfectæ, sed sunt partes alterius Reip. non possunt bellum inferre, aut gerere, quemadmodum dux Albanus, aut come: Beneventaneus: sunt enim partes regni Castellæ, & per consequens non habent perfectas Respub. Sed cum hæc sint magna ex parte aut jure gentium, aut humano, consuetudo potest dare facultatem & auctoritatem belli gerendi. Unde si quæ civitas, aut alius princeps obtinuit antiqua consuetudine jus gerendi per se bellum, nō est ei neganda hæc auctoritas, etiam si aliàs non videtur habere Rempubicam perfectā

Item

Item etiam necessitas hanc licentiam & auctoritatem concedere posset. Si enim in eodem regno una civitas aliam oppugnet, vel aliquis ex ducibus alium ducem, & rex negligeret, aut non auderet vindicare injurias illatas, posset civitas, aut dux, qui passus est injuriam, non solum se defendere, sed etiam bellum inferre, & animadvertere in hostes, & malefactores etiam occidere: qui alias neque defendere quidem commodè se posset. Non enim hostes abstinerent ab injuria, si illi qui patiuntur injuriam, contenti essent solum se defendere. Qua ratione etiam conceditur privato homini, ut possit invadere inimicum, si aliter non patet ei via se defendendi ab injuria, & hac satis de ista quaestione.

Tertia quaestio, Quæ (10) possit esse ratio, *Tertia*
 & causa justi belli, quæque magis necessaria *quaestio*
 est, ad hanc causam, & disputationem, *principa-*
 barbarorum. Pro qua sit prima propo- *lis.*
 sitio Causa justi belli non est diversitas reli- *1. Propo-*
 gionis. Hac probata fuit prolixè in proxi-
 ma relectione, ubi impugnavimus quartum
 titulum, qui prætendi potest ad possessionem barbarorum: quia scilicet nolunt recipere fidem Christianam. & est sententia
S. Tho. 2. 2. q. 66. artic. 8. & communis sen-
 tentia doctorum: neque scio aliquem qui
 contrarium sentiat. *Secun-*

II. Prop. Secunda propositio, Non est [11] justa causa belli, amplificatio imperii. Hæc notior est, quàm ut probatione indigeat, aliàs esset æquè justa causa ex utraque parte beligerantium, & sic essent omnes innocentes. Ex quo iterum sequeretur, quòd non liceret occidere illos: & implicat contradictionem, quòd esset justum bellum, & non liceret occidere illos.

III. Prop. Tertia propositio, Nec [12] est justa causa belli, aut gloria propria, aut aliud commodum principis. Hæc etiam nota est. Nam princeps debet & bellum & pacem ordinare ad bonum commune Reipub. nec publicos redditus pro propria gloria aut

Prob. 1. commodo erogare, & multò minus cives suos periculis exponere. Hoc enim interest inter regem legitimum, & tyrannum, quòd tyrannus ordinat regimen ad proprium quæstum, & commodum: rex autem ad bonum publicum, ut tradit *Arist. 4. Politico. c. 10.* Item habet auctoritatem à reip. ergo debet uti illa ad bonum reip. Item leges debent esse nullo privato commodo, sed pro communi utilitate civium conscriptæ, ut habetur *distin. 4. cap. Erit autem lex*; ex Isidoro. ergo etiam leges belli debent esse pro communi utilitate & non propria principis. Item hoc differunt liberi à servis, ut

Arist.

Arist. tradit primo *Polit. c. 3. & 4.* quod domini utuntur servis ad propriam utilitatem non servorum: liberi autem non sunt propter alios, sed propter se. Unde quod principes abutantur civibus, cogendo eos militare, & pecuniam in bellum conferre, non pro publico bono, sed pro privato suo commodo, est cives servos facere.

Quarta propositio, Unica [13] est & sola causa justa inferendi bellum, injuria accepta. Hæc probatur primo autoritate Augusti. lib. 83. * q. *Justa bella solent diffiniri*, &c. ut supra, & est determinatio *S. Sho. secunda secunda q. 40. articuli. 1.* & omnium doctorum. Item bellum offensivum est ad vindicandum injuriam, & animadvertendum in hostes, ut dictum est, sed vindicta esse non potest ubi non præcessit culpa & injuria. ergo. Item non majorem auctoritatem habet princeps supra extraneos, quam sub; sed in suos non potest gladium stringere, nisi fecerint injuriam: ergo neque in extraneos. Et confirmatur ex eo, quod supra allatum est ex Paulo, Rom. 13. de principe, *Non sine causa gladium portat: minister enim Dei est, vindex in iram ei qui male agit.* Ex quo constat, quod adversus eos, qui nobis non nocent, non licet ita gladio uti, cum occidere innocentes prohibitum sit jure natu-

IV. Prop.

* Potius

qvastio-

usb. super

Josue. q. 10

Prob. 1. 2.

3.

naturali. Omitto nunc si fortè Deus specialiter aliud præciperet; ipse enim est Dominus vitæ & mortis, & posset pro suo jure aliter disponere.

V. Prop.

Quinta propositio [14] Non quælibet & quantavis injuria sufficit ad bellum inferendum. Hæc probatur, Quia nec etiam in populares & naturales licet pro quacunque culpa pœnas atroces exequi, ut mortem, aut exilium, aut confiscationem bonorum. Cum ergo quæ in bello geruntur, omnia sint gravia, & atrocia, ut cædes, incendia, vastationes; non licet pro levibus injuriis bello persequi autores injuriarum, quia juxta mensuram delicti debet esse plagarum modus. *Deuteronom. 25.*

*Questio
quarta
principa-
lis.*

I. Prop.

Quarta quæstio est de jure belli, quid scilicet, & quantum liceat in bello justo, de qua fit prima propositio, In [15] bello licet omnia facere, quæ necessaria sunt ad defensionem boni publici. Hæc nota est, cum ille sit finis belli, Rempublicam defendere & conservare. Item hoc licet privato in defensione sui, ut probatum est. ergo multò magis licet Reipub. & principi.

II.

** Alias
partem.*

Secunda propositio, Licet (16) recuperare omnes res perditas, & illaram * præciū. Hæc etiam est notior quam ut indigeat probatione. Ad hoc enim vel infertur, vel suscipitur bellum.

Ter-

Tertia propositio, Licet (17) occupare, *III. Prop.*
 ex bonis hostium impensam belli & omnia *Prob. 1.*
 damna ab hostibus injustè illata. Hæc pa-
 tet, Quia ad omnia illa tenentur hostes, qui
 fecerunt injuriam: ergo princeps potest o-
 mina illa repetere, & bello exigere. Item ut
 prius. Quia cum non patet alia via, licet *Probat. 2.*
 privato occupare omne debitum à debitore.
 Item si quis esset legitimus judex utriusque *3.*
 partis gerentis bellum, deberet condemna-
 re injustos aggressores, & autores injuriæ,
 non solum ad restituendas res ablatas, sed
 etiam ad refarciendum impensam belli, &
 omnia damna. Sed princeps, qui gerit
 justum bellum, habet se in causa belli tan-
 quam judex, ut statim dicemus. ergo etiam
 ille potest omnia illa ab hostibus exigere.

Quarto propositio, Nec (18) solum hæc *IV. Prop.*
 licent, sed ulterius etiam progredi potest
 princeps justi belli, quantum scilicet neces-
 se est, ad parandam pacem & securitatem
 ab hostibus, puta diruere arcem hostium, &
 in hostico etiam munitionem erigere, si
 hoc necesse sit ad vitandum periculum ab
 hostibus. Probatur, Quia, ut supra dictum *Prob. 1.*
 est, finis belli est pax, & securitas. ergo ge-
 renti bellum justum licent omnia, quæ ne-
 cessaria sunt ad consequendam pacem,
 & securitatem. Item tranquillitas &
 pax

Prob. 2.

& pax computantur inter bona humana, unde nec summa etiam bona faciunt statum felicem sine securitate: ergo si hostes eripiunt, & turbant tranquillitatem reipub. licet vindicare ab illis per media convenientia. Item contra hostes intraneos, hoc est contra malos cives, licet hæc omnia facere. Ergo etiam contra hostes extraneos. Antecedens patet: si quis enim in repub. fecit injuriam civi, magistratus non solum cogit autorem injuriæ satisfacere læso, sed etiam si timetur ab illo, cogitur dare fidejussores, aut recedere à civitate, ita ut vitetur periculum ab illo. Ex quibus patet, quod parta victoria, & recuperatis rebus, licet ab hostibus exigere obsides, naves, arma, & alia, quæ sine fraude & dolo necessaria sunt ad retinendum hostes in officio, & vitandum ab illis periculum.

*Corollar.**V. Prop.*

Quinta propositio, Nec [19] tantum hoc licet, sed etiam parta victoria, recuperatis rebus, & pace etiam & securitate habita, licet vindicare injuriam ab hostibus acceptam, & animadvertere in hostes, & punire illos pro injuriis illatis. Pro cujus probatione notandum, quod principes non solum habent auctoritatem in suos, sed etiam in extraneos, ad coercendum illos, ut abstineant ab injuriis, & hoc jure gentium, & orbis

orbis totius autoritate. Imò videtur quòd *Princ.*
jure naturali, quia aliter orbis stare non pos- *quemad-*
set, nisi esset penes aliquos vis & autoritas *modum non*
deterrendi improbos & coercendi, ne bo- *solum in*
nis & innocentibus noceant. Ea autem *suos, sed*
quæ necessaria sunt ad gubernationem & *etiam in*
conservationem orbis, sunt de jure natura- *externos*
li, nec alia ratione probari potest, quod re- *authorita-*
spub. jure naturali habet autoritatem affi- *tem habe-*
ciendi supplicio & pœnis cives suos, qui *ant jure*
reipub. sunt perniciosi. Quòd si respubli- *gentium*
ca hoc potest in suos, haud dubium, quia *atque a-*
orbis possit in quoscunque perniciosos & *deo jure*
nequam in homines : & hoc non nisi per *natura,*
principes. Ergo pro certo principes pos- *ex auto-*
sunt punire hostes qui injuriam fecerunt *ris senten-*
reipubl. & omnino postquam bellum rite & *ria.*
justè susceptum est, hostes obnoxii sunt,
principi tanquam judici proprio : Et con-
firmatur hæc, quia revera nec pax, nec
tranquillitas, quæ est finis belli, aliter ha-
beri potest, nisi hostes malis & damnis af-
ficiantur, quibus deterreantur, ne iterum
aliquid tale committant. Quæ omnia et-
iam probantur & confirmantur autoritate
& exemplis bonorum. Ut enim supra
citatum est, Machabæi gesserunt bella non
solum ad recipiendas res amissas, sed ad
vindican- dum injurias. Quod idem fece-
runt

runt Christianissimi principes, & religiosissimi imperatores. Et præterea non tollitur ignominia & dedecus reipub. profligatis tantum hostibus, sed etiam severitate poenæ afflictis & castigatis. Princeps autem non solum res alias, sed honorem & auctoritatem reipub. defendere tenetur & conservare.

Dubium I Ex omnibus supra dictis oriuntur multa dubia. Et primum, quidem dubium circa justitiam belli, utrum ad bellum justum sufficiat quod princeps credat se habere justam causam. Ad hoc fit prima propositio,

A. Prop.

[20] Non semper hoc satis est. Probatur primo, quia in aliis minoribus causis non sufficit nec principi nec privatis, quod credant se justè agere, ut notum est, possunt enim errare vincibiliter & affectatè: & ad actum bonum non sufficit sententia cujusque sed oportet ut fiat secundum judicium sapientis, ut patet 2. *Ethic.* Item alias sequeretur, quod plurima essent bella justa ex utraque parte. Communiter enim non contingit, quod principes gerant bellum mala fide, sed credentes se justam causam sequi: & sic omnes bellantes essent innocentes, & per consequens * liceret interficere in bello. Item aliàs etiam Turcæ & Saraceni gererent justa bella adversus Chri.

* *al. non liceret.*

Christianos putant enim se obsequium præstare Deo.

Secunda propositio, oportet [21] ad bel- *Il. Prop.*
lum justum magna diligentia examinare
justitiam & causas belli, & audire etiam ra-
tiones adversariorum, si velint ex æquo &
bono disceptare. *Omnia enim sapienti* (ut ait Terent.
Comicus) *verbis prius experiri oportet, quam*
armis, & oportet consulere probos, & sapi-
entes viros, & qui cum libertate, & sine ira,
aut odio, & cupiditate loquantur. *Haud*
enim facile verum cernitur (ut ait Crispus) *Salust.*
ubi illa efficiunt. Hæc manifesta est. Nam
cum in rebus moralibus difficile sit verum
& justum attingere si negligenter ista tra-
ctarentur, facile errabitur, nec talis error
excusabit autores, maximè in re tanta, & ubi
agitur de periculo & calamitate multorum,
qui tandem sunt proximi, & quos diligere
tenemur, sicut, nos ipsos.

Secundum dubium, an [22] subditi te- *Dubium 2.*
neantur examinare causam belli, vel an
possint militare nulla diligentia circa hoc
adhibita, quemadmodum lictores exequi
possunt decretum prætoris sine alia exami-
natione. De hoc dubio sit prima propo- *l. Prop.*
sio; Si subdito constat de injustitia belli,
non licet militare, etiam ad imperium prin-
cipis. Hæc patet. Quia non licet interfice-

re innocentem quacunque autoritate. Sed hostes sunt innocentes in eo casu; ergo non licet interficere illos. Item princeps peccat inferendo bellum in eo casu; sed *non solum qui male agunt, sed & qui consentiunt facientibus, digni sunt morte.* ad Rom. i. ergo milites etiam nulla fide pugnantes non excusantur. It. non licet interficere cives innocentes mandato principis; ergo nec extraneos. Ex quo sequitur corollarium, quod

Corollar. [23] etiam si subditi habeant conscientiam de injustitia belli, non licet sequi bellum, siue errent, siue non. Patet, quia *omne quod non est ex fide, peccatum est.* ad Rom. 14.

II. Prop. Secunda propositio, Senatores, [24] & reguli, & universaliter, qui admittuntur, vel vocati, vel etiam ultro venientes ad consilium publicum, vel principis, debent, & tenentur examinare causam injusti belli. Patet, quia quicumque potest impedire periculum & damna proximorum, tenetur, maximè ubi agitur de periculo mortis, & majorum malorum, quale est in bello. Sed tales possunt, consilio suo & autoritate causas belli examinantes, avertere bellum, si fortè injustum est: ergo tenentur. Item si negligentia istorum bellum injustum gereretur, isti videntur consentire, imputatur enim alicui quod potest & debet impedire

dire, si non impedit. Item quia solus rex non sufficit ad examinandas causas belli: & verisimile est quod potest errare, imò quod errabit magnò cum malo & pernicie multorum: ergo non ex sola sententia regis, imò nec ex sententia paucorum, sed multorum & proborum debet geri bellum.

Tertia propositio, Alii [25] minores qui *III, Prop.* non admittuntur nec audiuntur apud principem, aut in consilio publico, non tenentur examinare causas belli, sed possunt credentes majoribus licite militare. Probat^rur primò, quia nec fieri potest, nec expediret reddere rationem negotiorum publicorum omnibus de plebe. Item quia homines inferioris ordinis, etiam si intelligerent injustitiam belli, prohibere non possent, & sententia eorum non audiretur: ergo frustra examinarent causas belli. Item quia ejusmodi hominibus, nisi contrarium constiterit, sufficiens argumentum debet esse pro justitia belli, quod publico consilio & autoritate geratur: ergo non est opus illis ulteriori examinatione.

Quarta propositio, nihilominus [26] possent esse talia argumenta & indicia de injustitia belli, quod ignorantia non excusaret etiam hujusmodi subditos militantes. Patet, quia posset esse talis ignorantia affe-

etata, & pravo studio adversus hostes concepta. Item aliâs infideles excusarentur, sequentes principes suos in bello contra Christianos, & non liceret illos interficere: quia certum est quod credunt se habere justam causam belli. Item excusarentur, milites, qui crucifixerunt christum ex ignorantia, sequentes edictum Pilati. Item, etiam excusaretur populus Judæorum, qui persuasus à majoribus, clamabat, *Tolle, tolle, crucifige eum.*

Dubium 3

Tertium dubium, quid [27] faciendum cum justitia belli dubia est, hoc est cum in utranq; partem sunt rationes apparentes.

1. Propo-

& probabiles. Prima propositio. Quo ad ipsos principes, videtur quod si unus est in legitima possessione, manente dubio non possit alius bello & armis repetere. Ut, exempli gratia, si rex Francorum est in legitima possessione Burgundiæ, si etiam est dubium, an habeat jus ad illam nec ne, non videtur, quod Imperator possit armis repetere: & e contrario nec Rex Francorum Neapolim aut Mediolanum, si dubium est cujus juris sint. Probatur, quia in dubiis, melior est conditio possidentis: ergo non licet spoliare possessorem redubia. It. si res ageretur coram judice legitimo, nunquã in re dubia spoliaret judex possessore: ergo dato, quod
illi

illi principes, qui prætendunt jus, sint iudices in illa causa, non possunt licite spoliare possessorem manente dubio de jure. It. in rebus & causis privatorum nunquam in causa dubia licet spoliare possessorem legitimum: ergo nec in causis principum, leges enim sunt principum si ergo secundum leges humanas non licet in causa dubia spoliare legitimum possessorem, ergo merito potest objici principibus. *Patere legem, quam ipse tulerit. Quod enim, quisque juris in alium statuit, ipse eodem jure uti debet.* Item alias esset bellum justum ex utraque parte, & bellum nunquam componi posset. Si enim in causa dubia licet uni armis repetere, ergo alteri defendere & postquam unus recuperasset, posset iterum alius reposcere, & sic nunquam esset finis bellorum cum pernicie & calamitate populorum. *11. Prop.*

Secunda propositio, si [28] civitas, aut provincia, de qua dubitatur, non habet legitimum possessorem; ut si deserta est morte legitimi domini, & dubitatur an hæres sit rex Hispaniæ, aut rex Gallorum, nec potest certum sciri de jure, videtur, quod si unus velit componere & dividere, vel compensare pro parte, quod alter teneatur recipere conditionem, etiam si sit violentior, & possit armis totum occupare; nec habeat justam causam belli. Probatur, quia alius non facit injuriam in pari causa,

petendo æqualem partem. Item in privatis causis, etiam in re dubia, non liceret totum occupare. Item eodem modo bellum esset justum ex utraque parte. Item justus iudex neutri totum addiceret, & attribueret.

III. Prop. Tertia propositio, qui [29] dubitat de iure suo, etiam si pacificè possideat, tenetur examinare causam diligenter audire pacificè rationes alterius partis, si fortè possit certum scire, vel pro se, vel pro alio. Hæc probatur. Quia jam non bona fide possidet qui dubitat, & negligit scire veritatem. Item in causa matrimoniali, si quis etiam legitimus possessor incipit dubitare veritatem, utrum hæc mulier sit sua, vel alterius: certum est quòd tenetur rem examinare: ergo eadem ratione in aliis causis. Item principes sunt iudices in propriis causis, quia non habent superiores, sed certum est, si quis contra legitimum possessorem opponit aliquid, quòd iudex tenetur examinare causam: ergo etiam principes in dubia tenentur examinare causam.

IV. Prop. Quarta propositio. Examinata [30] causa quamdiu rationabiliter perseverat dubium, legitimus possessor non tenetur cedere possessione, sed potest licitè retinere. Patet primò, quia iudex non posset eum expolia-

poliare: ergo nec ipse tenetur cedere, nec in toto, nec in parte. Item in causa matrimoniali in re dubia non tenetur cedere, ut in c. *inquisitioni*, de sententia excommunic. & in c. *Dominus*. de secundis nuptiis: ergo nec in aliis causis. Et *Adrian.* expressè q. *secunda*, *quotlib. secundo*, tenet quòd dubitans, licetè potest retinere possessionem: hoc quo ad ipsos principes in re dubia: Sed quo ad subditos in dubio belli iusti, *Adrianus quidem quotlibero secundo*, ad *Adriani* primum argumentum principale, dicit, *sententia* quòd subditus dubitans de iustitia belli, id *de subdi.* est utrum causa, quæ allegatur, sit sufficiens, vel simpliciter an subsit causa sufficiens ad indicendum bellum; non potest licetè etiam ad imperium superioris militare in tali bello. Probat, quia exponit se periculo peccati mortalis. Item, quia quod non est ex fide peccatum est, quod secundum doctores & veritatem, non solum intelligitur contra conscientiam certam, aut contra opinativam, sed etiam contra dubiam. Idem videtur tenere *Sylvest. l. bellum* 1. §. 9.

Sed sit quinta propositio, Primò non (31) *l. Prop.* est dubium, quin in bello defensivo liceat *quæ refel-* subditis in re dubia sequi principem suum *litur A.* in bellum, imò quòd teneantur sequi, sed *Adriani sen-* etiam *tentia,*

etiam de bello offensivo. Probatur primo, quia princeps, ut dictum est, nec potest semper, nec debet reddere subditis rationes belli: & si subditi non possint militare nisi postquam scirent iustitiam belli, Respublica periclitaretur vehementer, & pateret injuriæ ostium. Item in dubiis tutior sequenda est pars: sed si subditi in casu dubii non sequantur principem suum in bellum, exponunt se periculo prodendi hostibus rempublicam: quod multò gravius est, quàm pugnare contra hostes cum dubio. Ergo debent potius pugnare. Item manifestè probatur, quia licitor tenetur exequi sententiam judicis etiam si dubitet an sit iusta, contrarium enim esset valde periculolum. Item hoc argumentum videtur

Est hic lo- defendere August. contra Manich. *Justus*
cus lib. 22. si fortè etiam sub rege homine sacrilego militet,
contra recte potest eo jubente bellare: si, quod sibi jube-
Faust c. tur, vel non esse contra Dei præceptum, certum
75. licet est, vel utrum sit, certum non est 23. q. 1. quid
non omni- culpatur. Ecce August. diffinientem ex-
no eisdem pressè si non est certum, id est, si dubium
verbis. est an sit contra Dei præceptum, quòd li-
 citum est subdito bellare. Nec Adrianus
 se expedire potest ab illa Augustini autori-
 tate, quamvis se in omnem partem vertat:
 sine dubio enim conclusio nostra est deter-
 mina-

minatio August. Nec valet dicere, quòd talis debet tollere dubium, & formare sibi conscientiam, quòd bellum sit justum: nam stat quòd mortaliter loquendo, non possit sicut in aliis dubiis. Adrianus autem vide. *Causa erratur errasse in hoc, quòd putavit, si dubito an roris A. hoc bellum sit justum principi vel utrum drianus sit causa justa hujus belli, quòd statim consequatur, quòd dubitem utrum liceat mihi ire ad hoc bellum, nec ne, Fateor. enim quòd nullo modo licet facere contra dubium conscientiae, & si dubito, an liceat mihi facere hoc, nec ne, pecco si faciam sed non sequitur, dubito an sit justa causa hujus belli, ergo dubito an liceat mihi bellare, vel militare in hoc bello. Imo oppositum sequitur. Si enim dubito an bellum sit justum, sequitur quòd licet mihi ad imperium principis mei militare sicut non sequitur, licetor dubitat an sententia judicis justa sit, ergo dubitat an liceat sibi exequi sententiam, imò scit quòd tenetur exequi. Et idem est de hoc dubio: dubito an hæc sit uxor mea, ergo teneor ei reddere dubitum.*

Quartum dubium est, [32] An possit esse bellum justum ex utraque parte: Respondetur? Prima propositio, Seclusa ignorantia manifestum est, quòd non potest contingere. Quia si constat de jure & justitia utri-

*Dubium IV
I. Prop.*

utriusque partis ; non licet in contrarium bellare , nec offendendo , nec defendendo.

II. Prop. Secunda , Posita ignorantia probabili facti aut juris , potest esse ex ea parte qua vera iustitia est , bellum iustum per se , ex altera autem parte bellum iustum , id est excusatum à peccato bona fide. Quia ignorantia invincibilis excusat à toto. Item saltē

Et si prin- ex parte subditorum saepe potest contingere. Dato enim quod princeps , qui gerit
ceps nove- bellum in iustum , sciat iniustitiam belli ;
rit inju- tamen (ut dictum est) subditi bona fide
sticiam possunt sequi principem suum : & sic ex u-
belli , sub- traque paret subditi licitè pugnant.
diti ex u-

traque Sed ex hoc sequitur quintum dubium.
parte non Utrumqui [33] ex ignorantia sequutus est
nunquam bellum iniustum , si postea constiterit ei de
licitè pu- iniustitia belli , teneatur restituere , sive
gnant. loquamur de principe sive de subdito. Pri-

Dubiū V. ma propositio , Si quidem habebat proba-
I. Prop. bilitatem de iniustitia belli , tenetur adveniēte notitia de iniustitia , restituere ablata , quæ nondum consumpsit , id est quantum factus est locupletior : non autem quæ consumpsit , quia regula juris est , quod qui non est in culpa , non debet esse in damno : sicut qui bona fide fuit in convivio lautissimo furis , ubi res furtivæ consumptæ sunt , non tenetur restituere , nisi fortè quantum
domi

domi consumpsisset. Si autem dubitavit de injustitia belli, sequutas auctoritatem principis. Sylvest. in verb. *bellum*, primò, *Sylvestri* §. 9. dicit, quòd tenetur de omnibus, quia *sententia*. mala fide pugnavit.

Sed sit secunda propositio conformiter *11. Prop.* ad suprà dicta, Quòd nec iste tenetur de *contra* consumptis, sicut nec alius, quia (ut dictum *Sylvest.* est) licitè & bona fide pugnavit. Sed esset *sententiã*. verum, quòd *Sylvester* dicit, si re vera dubitasset, an liceret ire ad bellum, quia jam facit contra conscientiam. Sed est mul- *Notandũ*. tùm considerandum, quòd stat, quod bellum sit justum & licitum per se, illicitum autem per accidens, stat enim quòd quis habeat jus ad recurandam civitatem, aut provinciam, & tamen ratione scandali fiat prorsus illicitum. cum enim, ut suprà dictum est, bella geri debeant pro bono communi, si ad recuperandam unam civitatem necesse est quòd sequantur majora mala in Repub. ut vastatio multarum civitatum; cædes magna mortalium, irritatio principũ, occasiones novorum bellorum in perniciem ecclesiæ: item quòd paganis detur oportunitas invadendi & occupandi terras Christianorum: in dubitatum est quin teneatur princeps potius cedere juri suo, & abstinere à bello. Clarum est enim quòd si
rex

rex Gallorum, verbi gratia, haberet jus ad recuperandum Mediolanum; ex bello autem, & regnum Galliæ, & ipsa provintia Mediolanensis paterentur intoleranda mala & calamitates graves, non licet ei recuperare, quia bellum ipsum aut fieri debet vel propter bonum Galliæ, aut Mediolani. quando ergo e contrario utriusque magna mala ex bello futura sunt, non potest bellum justum esse.

Dubium Circa aliam quæstionem quantum liceat in bello justo, sunt etiam multa dubia. *ex quæstione utriusque principali ordinis. Arg. pro parte affirm.* Primum, (34.) An liceat in bello interficere innocentes, & videtur quod sic; quia filii Israël primo interfecerunt infantes, ut patet Ios. 6. in jericho, & postea Saul 1. Reg. 15. interfecit pueros in Amalec. utrumque ex autoritate & mandato Domini. Quæcumque autem scripta sunt, ad nostram doctrinam scripta sunt; ut patet ad Roman. 15. ergo & nunc si bellum sit justum, licebit interficere innocentes.

I. Prop. Prob. 1. De hoc dubio sit prima propositio, nunquam (35) licet se per & ex intentione interficere innocentem. probatur primo

2. Exod. 23, *Infantem et justum non occides.* Secundo, Fundamentum justii belli est injuria, ut supra ostensum est, sed injuria, non est ab innocente: ergo non licet bello uti

con-

contra illum. Tertio, Non licet in Republica pro delictis malorum punire innocentes : ergo nec pro injuria malorum licet punire innocentes apud hostes. Quarto, Aliàs jam bellum esset justum ex utraque parte, sedusa ignorantia : quod esse non potest, ut ostensum est. Et patet consequentia, quia innocentes, certum est quòd *Confirm* possent se defendere contra quemcunque conantem interficere. Et confirmatur totum hoc Deuteronom. 20. Mandatur filiis Israel, ut cum vi ceberint civitatem, alios quidem interficiant, parcant autem mulieribus, & parvulis. Ex quo sequitur, quod [36] etiam in bello contra Turcas non licet interficere infantes, patet, quia sunt innocentes. Imò nec fœminas inter infideles, patet, quia quantum ad bellum spectat, præsumuntur innocentes, nisi fortè constaret de aliqua fœmina, quod esset in culpa. Imò idem videtur judicium de innoxiiis agricolis apud Christianos, imo de alia gente togata & pacifica, quia omnes præsumuntur innocentes, nisi contrarium constaret. Hac etiam ratione sequitur, quod nec licet interficere nec peregrinos, nec hospites qui versantur apud hostes, quia præsumuntur innocentes, nec re vera sunt hostes. Eâdem ratione nec clericos,
nec

nec religiosos, quia præsumuntur innocentes in bello nisi constet de contrario, ut cum actualiter pugnant.

II. Prop. Secunda propositio, per [37] accidens autem, etiam scienter aliquando licet interficere innocentes, puta cum oppugnatur arx, aut civitas justè, in qua tamen constat multos esse innocentes, nec possunt machinæ solvi, & alia tela, vel ignis subijci ædificiis, quin etiam opprimantur innocentes sicut nocentes. Probatur, Quia alias non posset geri bellum contra ipsos nocentes, & frustraretur justitia bellantium: Sicut e contrario si oppidum oppugnatur injustè, & justè defenditur, licet mittere machinas, & alia tela in obsesiores, & in castra hostium, dato quod inter illos sint aliqui pueri, aut innoxii.

*Animad-
verten-
dum hoc.*

Sed tamen est considerandum, quod paulo antedictum est quod oportet cavere, ne ex ipso bello sequantur majora mala, quàm vitentur per ipsum bellum: si enim ad summam belli victoriam parum confert, expugnare arcem, aut oppidum, ubi est præsidium hostium, & sunt multi innocentes, non videtur quod liceat ad expugnandum paucos nocentes, occidere multos innocentes, subijciendo ignem, vel machinas, vel alia ratione, qua indifferenter oppri-

primantur innocētes cum nocentibus. Et tandem nunquam videtur licitum interficere innocētes, etiam per accidens, & præter intentionem, nisi quando bellum iustum expedire & geri aliter non potest, juxta illud Matth. 13. *Sinite crescere, zizania, ne foris colligentes zizania, eradicetis simul & triticum.* *Breve & resolutum
Auctoris
responsū.*

Sed circa hæc potest dubitari, An [38] liceat interficere innocētes, à quibus tamen in futurum imminet periculum, puta pueri Saracenorum sunt innocētes: sed timendum merito est, ne facti adulti, pugnent contra Christianos, & inferant bellum cum periculo. Et præterea etiam togati puberes apud hostes, qui non sunt milites, præsumuntur innocētes: sed isti armabuntur postea in milites, & inferent periculum, an liceat tales interficere. Et videtur quod sic, eadem ratione qua per accidens licet interficere alios innocētes. Item *Deuter. 20.* præcipitur filiis Israel, ut cum expugnaverint aliquam civitatem, Interficiant omnes puberes, non est autem præsumendum, quod omnes essent nocentes. Respondetur ad hoc licet posset fortasse defendi, quod in tali casu possint interfici: tamen credo, quod

nullo modo licet, quia non sunt facienda mala ut vitentur etiam alia mala majora, & intolerabile est, quod occidatur aliquis pro peccato futuro. Et præterea sunt alia remedia ad cavendum in futurum ab illis, ut captivitas, exilium, &c. ut statim dicemus. Unde sequitur, quod si ve jam parta victoria, si ve actu bellum geratur, si constat militibus de innocentia alicujus, possunt eum liberare & tenentur.

*Ad arg.
pro parte
affirm.*

Ad argumentum in contrarium respondetur, quod illud factum fuit speciali mandato Dei, qui iratus, & indignatus contra populos illos, voluit perdere omnino, sicut misit ignem in Sodomam & Gomorrhæam, qui devoraret tam innocentes, quam nocentes: ipse autem est dominus omnium, nec dedit hanc licentiam ex lege communi.

*Ad locum
Deuteronomii
paul. à an
tea posuim*

Et ad illud *Deuter. 20.* potest eodem modo responderi: sed quia illic data est lex belli communis in omne tempus futurum, potius videtur, quod illud Dominus dixit, quia revera omnes puberes reputantur in civitate inimica nocentes, & non possunt distingui innocentes à nocentibus: ideo omnes possunt interfici.

*Dubium II.
I. Prop.*

Secundum dubium est, an [39] liceat in bello justo spoliare innocentes inter hostes: fitque prima propositio. Certum est quod licet

licet spoliare innocentes bonis & rebus, quib. hostes adversum nos ufuri sunt, ut, armis, navibus, machinis. Patet, quia aliter victoriam consequi non possemus: quæ est finis belli, imo etiam licet accipere pecunias innocentum, & comburere & corrumpere frumenta, occidere eqvos, si ita opus est, ad debilitandum hostium vires. Ex quo sequitur corollarium, quòd si bellum sit perpetuum, licet indifferenter expoliare omnes apud hostes tam nocentes quàm innocentes: quia ex opibus suorum hostes alunt bellum injustum, & contra debilitantur vires eorum, si cives eorum spoliantur. Corollar.

Secunda propositio, si [40] bellum satis II. Prop. commodè geri potest, non spoliando agricolas aut alios innocentes, videtur quòd non liceat eos spoliare. Hoc tenet Sylvest. Sylvest. in verbo *bellum* l. §. 10. quia bellum fundatur in injuria, ergo, non licet jure belli uti in innocentes, si aliunde potest recompensari injuria. Imò addit Sylvest. quòd etiam si fuerit justa causa spoliandi innocentes, transacto bello, tenetur victor restituere illis quicquid superest. Sed hoc non puto esse necessarium: quia, ut infra dicitur, si jure belli factum est, omnia cedunt in favorem & jus justum bellum ge-

Pia quidē rentium. Unde si licitè sunt capta, puto
Sylvestri quòd non sunt obnoxia restitutioni. Di-
hoc est sc- etum tamen *Sylvest.* pium est & non impro-
rentia, nō babile. Spoliare autem peregrinos & ho-
tamen vi spites, qvi sunt apud hostes nisi constet de
detur au culpa illorum, nullo modo licet qvia illi
tori ne- non sunt de numero hostium.

cessaria. Tertia propositio, si [41] hostes nolunt
III, Prop. restituere res injuria ablatas, & non possit,

qvi læsus est, aliunde commodè recuperare,
 potest undecunqve satisfactionem capere,
 sive à nocentibus, sive ab innocentibus. Ut
 si latrones Galli fecerint prædas in agrum
 Hispanorum, & rex Francorum nolit co-
 gere illos ad restitutionem, cum possit, pos-
 sunt Hispani autoritate principis sui spo-
 liare mercatores Gallos aut agricolas quan-
 tumcunqve innocentes: qvia licet fortè à
 principio Respub. aut princeps Gallorum
 non fuerit in culpa: jam est in culpa, qvia
 negligit vindicare, ut ait August. quod im-
 probè à suis factum est, & princeps læsus
 potest ex omni membro & parte Reipub.
 satisfactionem accipere. Unde literæ mar-
 charum aut repræfaliarum, quæ à princi-
 pibus in hujusmodi casibus conceduntur,
 non sunt per se injustæ, qvia per negligen-
 tiam & injuriam alterius principis, conce-
 dit læso suus princeps, ut possit recuperare
 bona

literæ re-
præfalia-
rum per
se quidem
non inju-
stæ, attanē
periculo.
sc,

bona sua, etiam ab innocentibus, sunt autem periculosa, & præbent occasionem rapinarum.

Tertium dubium, dato quòd [42] non liceat interficere pueros & alios innocentes, an saltem licet ducere illos in captivitatem & servitutem? Sitque pro illius declaratione unica propositio, Eodem modo licet ducere innocentes in captivitatem; sicut licet spoliare illos, quia libertas & captivitas inter bona fortunæ reponuntur: unde quando bellum est talis conditionis, quòd licet spoliare indifferenter omnes hostes, & occupare omnia bona illorum, etiam licet ducere in captivitatem omnes hostes sive nocentes, & cum bellum adversus paganos sit hujusmodi, quia est perpetuum, & nunquam satisfacere possunt pro injuriis & damnis illatis: ideo non est dubitandum quin liceat, & pueros, & fœminas Sacra-
 norum duceri in captivitatem & servitutem. Sed quia jure gentium inter Christianos videtur receptum, ut Christiani jure belli non fiant servi, in bello quidem inter Christianos non licet, sed si opus est, ad finem belli captivos ducere etiam innocentes, ut pueros & fœminas; non quidem in servitutem, sed ut pro illorum redemptione pecunias recipiamus, licitum est.

Dubiū III.

Respons.

*unica pro
positione
contenti.*

*Christiana
Christi-
anorum
jura
re bella
non
sunt ser-
vi.*

Quod tamen extendendum non est ultra, quam belli necessitas postulet, & consuetudo legitime belli gerantium obtinuit.

Dubiū IV Quartum dubium est utrum (43) saltem obsides, qui vel tempore induciarum, vel peracto bello ab hostibus recipiuntur, interfici possint, si hostes fidem fregerint, & con-

Responde- ventis non steterint. Respondeo per uni-
tur unica cam conclusionem, si obsides alias sint de
conclusio. numero nocentum, puta qui tulerunt contra eos arma, interfici jure possunt in eo casu. Si autem sunt innocentes, ex supra dictis constat, quod interfici non possunt, ut cum sunt pueri, aut foeminae, aut alii innocentes.

Dubiū V. Quintum dubium an (44) saltem in bello justè liceat interficere omnes nocentes.

Notanda Pro responsione notandum est, quod ut ex
hac qua- supra dictis patet, bellum geritur primo ad
tur. defendendum nos & nostra. Secundo, ad recuperandum res ablatas. Tertio, ad vindicandum acceptam injuriam. Quarto, ad pacem & securitatem parandam. His

l. Prop. praemisfis sit prima propositio, in ipso actu-
ali (45) conflictu praelii, vel in oppugnatione, aut defensione civitatis licet indifferenter occidere omnes, qui contra pugnant: & breviter, quandiu res est in periculo. Hoc patet, quia aliter rem bene gerere non possent

sent bellantes, nisi tollendo omnes impedi-
 entes, & contra pugnantes. Sed totum *In quo*
 dubium est, & difficultas, an parta jam vi *consistit*
 etoria, & ubi periculum non est ab hosti- *hujus du-*
 bus, liceat interficere omnes qui contra ar- *bii diffi-*
 ma tulerunt. Et videtur apertè quòd sic. *cultas.*
 Quia, ut suprà relatum est, inter præcepta
 militaria, quæ Dominus dedit *Deuter. 20. Ratio pro*
 unum est, ut expugnata civitate hostium, *part. affir.*
 interficerent omnes habitatores. Verba
 illius loci sunt hæc. *Si quando accoſſeris ad*
expugnandam civitatem, offeres ei primum pa-
cem. Si reciperit, & aperuerit tibi portas, cun-
ctus populus, qui in ea est, salvabitur, & ſervice
tibi ſub tributo: ſin autem fœdus inire noluerit,
& cœperit contra te bellum, oppugnabis eam.
Cumque tradiderit Dominus Deus tuus eam
in manu tua, percuties omne quod in ea est gene-
ris masculini in ore gladii, absque mulieribus, &
infantibus.

Secunda propositio, Parta [46] victo- *II. Prop.*
 ria, & rebns jam extra periculum positi, li-
 cet interficere nocentes. Probatur, Quia
 (ut jam dictum est) non solum ordinatur
 bellum ad recuperandas res, sed etiam ad
 vindicandum injuriam: ergo pro injuria
 præterita licet interficere auctoris injuriæ.
 Item hoc licet in proprios cives malefacto-
 res: ergo etiam in extraneos. Quia (ut
 supra

supra dictum est) belli princeps jure belli auctoritatem habet in hostes, sicut legitimus judex, & princeps. item, quia licet in praesentia non esset periculum ab hostibus, tamen in futurum securitas non haberetur, nisi timore supplicii hostes continerentur.

III. Prop. Tertia propositio, Solum [47] ad vindicandam injuriam non semper licet interficere omnes nocentes. Probatur, Quia etiam inter cives non liceret, ubi etiam esset delectum totius civitatis aut provinciae interficere omnes delinquentes, nec in communi rebellionem liceret occidere, & perdere totum populum. Unde pro simili facto Theodosius ab Amprosio ab Ecclesia est prohibitus, hoc enim esset contra publicum bonum, quod tamen est fines belli & pacis. ergo etiam non licet occidere omnes nocentes ex hostibus. Oportet ergo habere rationem injuriae ab hostibus acceptae, & damni illati, & aliorum delictorum. Et ex hac consideratione procedere ad vindictam & animadversionem, omni atrocitate & inhumanitate seclusa. In hoc enim propositio Cicer. 2. Officior. ait, quod animadvertendum est in noxios quantum aequitas & humanitas patiantur. & Salust. *Majores*, inquit, *nostri religiosissimi mortales nihil dictis eripiebant, praeter injuriae licentiam.*

Quar-

Quarta propositio, aliquando (48) etiam *IV. Prop.* licet & expedit interficere omnes nocentes. Probatur, Quia etiam bellum geritur ad parandam pacem & securitatem: sed aliquando aliter obtineri securitas non potest, nisi tollendo omnes hostes: & hoc maximè videtur contra infideles, à quibus nunquam ullis conditionibus pax æqua sperari potest. Et ideo unicum remedium est, tollere omnes, qui contra arma ferre possunt, modò jam fuerint in culpa. Et ita intelligendum est illud præceptum Deut. 20. Aliàs autem *Hic obiter respon-* in bello contra Christianos non puto quòd *detur ad* hoc sit licitum. Cum enim necesse sit ut *rationem* veniant scandala (ut habetur Matth. 18.) & *pro part.* bella inter principes, si semper victor inter- *affir. post* ficeret adversarios omnes, esset in perniciẽ *i. propositi-* generis humani, & Christianæ religionis, & *tionem ad* orbis citò in solitudinem redigeretur: nec *latam.* bella pro bono publico, sed in publicam calamitatem perditè gererentur. Oportet ergo ut pro mensura delicti sit plagarum, modus, nec ultra progrediatur vindicta, in quo etiam habenda est ratio & consideratio, quòd (ut suprà dictum est) subditi non tenentur, nec debent examinare causas belli, sed possunt sequi principem suum in bellum, contenti autoritate principis, & publici consilii: unde pro majori parte, licet ex

altera parte sit bellum iniustum, tamen milites qui veniunt ad bellum, & pugnant in bello, aut defendunt, vel oppugnant civitates, ex utraque parte sunt innocentes. Et ideo cum jam victi sunt, & non est periculum ab illis, credo quod interfici non possunt, non modo omnes, sed ne unus quidem ex illis, si praesumitur, quod bona fide in praelium venerunt.

Dubium VI Sextum dubium, An (49) liceat interficere deditos aut captivos, supposito etiam quod fuerunt nocentes. Respondetur, quod per se loquendo, nihil obstat quo minus capti in bello iusto, aut dediti, si fuerunt nocentes, interfici possint per se loquendo servata æquitate: sed quia in bello multa jure gentium constituta sunt, videtur receptum consuetudine, & usu belli, ut captivi parva victoria (nisi forte sint profugæ) & periculo transeunte, non interficiantur, & servandum est jus gentium eo modo, quo inter bonos viros servari consuetum est. De deditis autem non lego, nec audio talem consuetudinem; imo in deditionibus arcium, civitatum, solent qui se dediderunt, cavere sibi conditionibus, ut salva sint capita, & salvi mittantur: scilicet veriti ne simpliciter & nullis conditionibus dedantur, interficiantur: & hoc aliquoties factum legi-

gimus. Unde non videtur iniquum, ut si oppidum nihil cavendo dedatur, quin mandato principis, aut judicis, aliqui qui fuerunt notiores, occidantur.

Septimum dubium, (50) Utrum omnia *Dubium*
capta in bello justo fiant capientium & oc- *VII.*
cupantium. Prima propositio, Non est *I. Prop.*
dubitandum, quin omnia capta in bello ju-
sto usque ad sufficientem satisfactionem
rerum ablatarum per injuriam, & etiam im-
pensarum, fiant occupantium. Nec indi-
get probatione: quia ille est finis belli, sed
seclusa consideratione & restitutionis & sa-
tisfactionis, & stando in sunt jure belli di-
stinguendum videtur: nam capta in bello
aut mobilia, ut pecuniæ, vestes, argentum,
aurum: aut imobilia, ut agri, oppida, arces.

Quo supposito, sit secunda propositio: *II. Prop.*
Mobilia quidem [51] jure gentium omnia
fiunt occupantis, etiam si excedant com-
pensationem damnorum. hoc patet ex l. si
quid in bello. & l. hostes ff. de capti. & c. jus gen-
tium. i. distinct. & expressius Institut. de rer.
divis. §. item ea quæ ab hostibus. ubi dicitur,
quod jure gentium, quæ ab hostibus capi-
untur, statim nostra fiunt, adeo ut etiam
liberi homines in nostram servitutem de-
ducantur. Et Amprosius libro de Abrah.
patriarch. dicit, cum Abraham occidit qua-
tuor

tuor Reges, prædam quidem fuisse Abrahæ victoris, quanquam recusavit accipere, Genes. 14. & 23. q. 5. *Dicat aliquis*, Et confirmatur ex autoritate Domini, *Deuteronom. 25.* ubi de civitate expugnanda dicit, *Omni prædam exercitui divides, & comedes de spoliis hostium tuorum.* Hanc sententiam tenet Adrianus in quæstione de restitutione, in particulari quæstione de bello: Et Sylvest. in verbo, *bellum* §. 1. & §. 9. ubi dicit quòd qui justè pugnavit, non tenetur restituere prædam, 23 q. 7. *si de rebus.* Ex quo infert, quòd capta in bello justo, non compensantur cum debito principali: ut tenet etiam Archiep. 23. q. 2. *Dominus noster.* ita tenet Bart. in d. l. *si quid in bello*: & hoc intelligitur, etiam si hostis sit paratus aliis satisfacere de damno & injuriis. Quod tamen limitat Sylvest. & bene quo usque secundum æquitatem sit sufficienter satisfactum de damno & injuria. Non enim est intelligendum, quòd si Galli exciderunt unum pagum, aut ignobile oppidum Hispaniæ, quòd liceat Hispanis etiam (si possint) prædari totam Galliam, sed pro modo & quali-

Dubium tate injuriæ arbitrio boni viri.

incidens. Sed ex hac determinatione sequitur *du-*
Besp. III. bium an [52] liceat permittere militibus ci-
Propos. vitatem in prædam. Respondetur, & sit
 ter-

tertia propositio, Hoc per se non est illicitum, si necessarium est ad bellum gerendum, vel deterrendos hostes, vel ad accendendum militum animos. Ita Sylvest. *Sylvest.* verb. *bellum* §. 10. Sicut etiam licet incendere civitatem ex rationabili causa. Sed tamen quia ex hujusmodi permissionibus sequuntur multa sæva, crudelia præter omnem humanitatem, quæ à barbaris militibus committuntur innocentum cades, & cruciatus, virginum raptus, matronarum stupra, templorum spolia: ideo siue dubio, siue magna necessitate & causa, maximè civitatem Christianam, prædæ tradere per iniquum est. Sed si ita necessitas belli exigat, non est illicitum, etiam si credibile sit, quòd milites aliqua hujusmodi fœda & illicita patrent, quæ tamen duces & interdiceret & quàm possunt, prohibere tenentur.

Quarta propositio, his omnibus non obstantibus, non [53] licet militibus siue auctoritate principis aut ducis prædas agere, aut incendia facere; quia ipsi non sunt iudices, sed executores, & aliter facientes tenentur ad restitutionem. *IV. Prop.*

Sed de bonis & rebus immobilibus major difficultas est, & sit quinta propositio, Non est [54] dubium quin liceat occupare & tenere agrum, & arces, & oppida hostium

um, quantum neceſſarium eſt ad compenſationem damnorum illatorum : puta ſi hoſtes diruerunt arcem noſtram, incendunt civitatem, ſylvas, aut vineas, aut oliveta, licebit occupare viciffim agrum hoſtium, aut arcem, aut oppidum, & tenere. Si enim licet capere compenſationem ab hoſtibus pro rebus ab latis: certum eſt quod jure Divino, & naturali, non plus licet hanc recompenſationem accipere in mobilibus, quam imobilib.

VI. Prop.

Sexa propoſitio, etiam [55] ad parandam ſecuritatem, & vitandum periculum ab hoſtibus, licet occupare & tenere arcem aliquam, aut civitatem hoſtium neceſſariam ad deſenſionem noſtram, aut tollendā hoſtibus occaſionem, unde poſſint nocere.

VII. Prop.

Septima propoſitio, etiam [56] pro injuria illata, & nomine pœnæ, hoc eſt in vindictam, licet pro qvalitate injuriæ acceptæ multare hoſtes parte agri, aut etiam hac ratione occupare arcem, aut oppidum, ſed hoc, ut diximus, debet fieri cum modamine, & non quantum viribus & potentia armorum occupari & expugnari poteſt. Et ſi neceſſitas, & ratio belli poſtulat, ut major pars agri hoſtium occupetur, & plures civitates capiantur, oportet ut compoſitis rebus, & peracto bello reſtituantur, tantum

re-

retinendo, quantum sit justum pro compensatione damnorum & impensarum, & pro vindicta injuriæ, servata æquitate, & humanitate, quia pœna debet esse proportionata culpæ: & intolerabile esset, quod si Galli agerent prædas in pecora Hispanorum, vel incenderent pagum unum, quod liceret occupare totum regnum Francorum. Quod autem hoc titulo liceat occupare, aut partem agri, aut aliquam civitatem hostium, patet *Deut. 20.* ubi datur licentia in bello occupandi civitatē, quæ pacem recipere noluerit. Item malefactores intraneos licet punire hoc modo, scilicet privando illos domo, aut agro, aut arce pro rei qualitate: ergo etiam extraneos. Item superior judex potest commodè multare autorem injuriæ, tollendo scilicet ab eo civitatem aut arcem. ergo & princeps, qui læsus est, hoc poterit; quia jure belli factus est tanquam judex. Item imperium Romanum hoc modo & titulo auctum & amplificatum est, occupando scilicet jure belli civitates & provincias hostium à quibus injuriam acceperant, & tamen imperium Romanorum tanquam justum & legitimum defenditur ab August. Hieronym. Amb. Th. & aliis sanctis doctor. Imò posset videri approbatum à Domino in illo loco,

Redi-

Reddite quæ sunt Caesaris Caesari & à Paulo, qui cæsarem appellavit, & ad Roma. 13. admonet, potestatibus sublimioribus, & principibus subditos esse, & tributa pendere eis qui eo tempore omnes habebant auctoritatem ab imperio Romano.

Dubium VIII. Octavum dubium, Utrum [57] liceat imponere victis hostibus tributa. *Respons.* detur, quòd sine dubio licet, non solum ad compensandum damna, sed etiam ratione pœnæ, & in vindictam. Hoc satis patet ex supra dictis, & ex illo loco *Deuter. 20.* ubi dicit, quòd postquam ex justa causa accesserint ad expugnandum civitatem, si receperit eos, & aperverit portas, cunctus populus, qui in ea est, salvabitur, & serviet illis sub tributo, & hoc jus & usus belli obtinuit.

Dubium IX. Nonum dubium, An (58) liceat deponere principes hostium, & novos ponere & constituere, vel sibi retinere principatum. *1. Prop.* Prima propositio, Hoc non passim, & ex quacunque causa belli iusti licet facere, ut patet ex dictis. Nam pœna non debet excetere quantitatem, & rationem injuriæ, imò pœnæ sunt restringendæ, & favores ampliandi, quæ est non solum regula juris humani, sed etiam naturalis, & divini: ergo dato quòd injuria illata ab hostibus sit suffi-

ficiens causa belli, non semper erit sufficiens ad exterminationem principatus hostis & ad depositionem legitimorum & naturalium principum. Hoc enim esset prorsus scævum & inhumanum.

Secunda propositio, Non est negandum *II. Prop.* quin aliquando possint contingere sufficientes & legitimæ causæ, vel ad mutandos principes, vel ad occupandum principatū: & hoc vel pro multitudine & atrocitate damnorum & injuriarum, vel maximè quando aliter securitas & pax ab hostibus obtineri non potest: & immineret grande periculum Reipub. ab illis, nisi hoc fieret. Hoc patet. Si enim licet occupare civitatem ex causa, ut dictum est ergo tollere principem civitatis, & eadem est ratio de provincia, & principe provinciae, si causa major contingat.

Sed notandum circa 6. 7. 8. & 9. dubium *Notandū*
 (59) quòd aliquando, imò frequenter non solum subditi, sed etiam principes ipsi, qui re vera non habent causam justam, tamen bona fide gerunt bellum, ita inquam bona fide, ut excusentur ab omni culpa, puta cum facta diligenti examinatione, ex sententia doctorum & bonorum virorum geritur bellum. Et cum nemo debeat sine culpa puniri in tali casu, quamvis liceat
 Gg victo-

victori recuperare res ablatas, & fortè impensam belli: tamen sicut non licet porta victoria quancquam interficere, ita nec ultra justam satisfactionem occupare, nec exigere in rebus temporalibus. quia omnia alia fieri non possunt, nisi nomine pœnæ, quæ in innocentes cadere non debet.

Tres belli-gerandi canones.
 1. Ex his omnibus possunt componi pauci canones, & regulæ belligerandi: Primus canon, (60) Supposito quòd princeps habet auctoritatem gerendi bellum, primum omnium debet non quærere occasiones, & causas belli: sed si fieri potest, cum omnibus hominibus pacem habere, ut Paulus præcepit ad Ro. 12. debet autem recogitare, quòd alii sunt proximi, quos tenemur diligere sicut nos ipsos, & quod habemus omnes communem Dominum, ante cujus tribunal tenemur rationem reddere. Est enim ultimæ immanitatis, causas quærere, & gaudere, quòd sint ad interficiendum, & perdendum homines quos Deus creavit, & pro quibus Christus mortuus est: sed coactum & invitum venire oportet ad necessitatem belli.

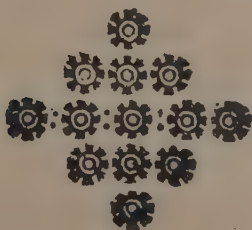
11.

Secundus canon, Conflato jam ex justis causis bello, oportet illud gerere non ad perniciem gentis, contra quam pellandum est, sed ad consequentiam juris sui, & defen-

defensionem patriæ, & Reipublicæ suæ, & ut illo bello pax aliquando, & securitas consequatur.

Tertius canon, Parta victoria, & confectio bello, oportet moderate, & cum modestia Christiana, victoria uti, & oportet victorem existimare se judicem sedere inter duas Respub. alteram, quæ læsa est, alteram, quæ injuriam fecit: ut non tanquam accusator, sed tanquam judex sententiam ferat, quæ satisfieri quidem possit Reipublicæ læsæ. Sed quantum fieri poterit, cum minima calamitate, & malo Reipublicæ nocentis, castigatis nocentibus, quantum licuerit: & maximè, quia ut plurimum, inter Christianos tota culpa est penes principes. Nam subditi bone fide pro principibus pugnent: & est perniciosum, quod Poëta ait, Ut quicquid delirant Reges, plectantur Achivi.

III.



ERRATA IN THE EDITION OF 1696.

[The text abounds in errors. There are included here only such errors as might be the cause of some difficulty. Consequently, variations in spelling, mistakes in the running heads, and mere typographical misprints (such as inversion, omission, duplication, substitution, incorrect spacing, etc.) are, as a rule, not included in this list, which has been checked by the editions of 1557 and 1565. Changes and omissions in the edition of 1696, concerning which there is some doubt as to whether they were intentional or unintentional, are not listed here, but due notice of them will be found in the footnotes to the Revised Text. Errors in the Preface of the edition of 1696 are not included in this list. Lines in the marginal references are indicated by *m.* A few of the errors listed here appeared in the Errata prefixed to the edition of 1696.]

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- 302, lines 15 and 18, for *consulationem* read *consultationem*.
 304, line 17, for *ventre* read *venire*.
 304, line 22, for *impediuntur* read *impediuntur*.
 305, line 2, for *impedidiuntur* read *impediuntur*.
 305, lines 13-14, for *Doctore* read *doctoribus*.
 305, line 2*m*, for *tripar ita* read *tripartita*.
 306, line 5, for *primum* read *primam*.
 306, line 8, for *geruntuntur* read *geruntur*.
 306, line 10, for *illo* read *illo*.
 306, line 17, for *aliâ* read *alias*.
 307, line 11, for *inquitatem* read *iniquitatem*.
 307, line 21, for *temperare* read *temperate*.
 308, line 19, for *secundem* read *secundum*.
 308, line 20, for *consoluit* read *consuluit*.
 308, line 21, for *excusati* read *excusari*.
 309, line 6, for *Eadem* read *Et eadem*.
 309, line 25, for *quilibes* read *quilibet*.
 310, line 8, for *sucre* read *surge*.
 310, line 10, for *furrunt* read *fuertint*.
 310, line 11, before *illo* dele *in*.
 310, line 11, for *quae resque* read *quaeresque*.
 310, line 13, for *prasunt* read *praesunt*.
 311, line 24, before *confessores* insert *et*.
 312, line 7, for *delibaverit* read *deliberaverit*.
 312, line 21, for *consulationem* read *consultationem*.
 312, line 1*m*, for *advertati* read *advertate* or *advertant*.
 313, line 26, for *delibetatio* read *deliberatio*.
 314, line 17, for *diffifire* read *diffinire*.
 314, line 19, for *quaestiones* read *quaestionis*.
 314, line 19, for *fuertunt* read *fuertint*.
 314, line 23, for *acciat* read *accipiat*.
 314, line 25, for *us* read *ut*.
 314, line 27, for *dubiae* read *dubia*.
 314, line 27, for *diputari* read *disputari*.
 314, line 8*m*, for *periros* read *peritos*.
 315, line 1, for *in utile* read *inutile*.
 315, line 14, for *licert* read *liceat*.
 315, line 16, for *pluced* read *placei*.
 315, line 16, for *quicquod* read *quicquid*.
 315, line 24, for *capessandum* read *capessendum*.

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- 316, line 2, insert *et* before *sine*.
 316, line 8, for *repugnant* read *repugnat*.
 316, line 10, for *de liberati* read *de liberali*.
 316, line 25, for *1.2.* read *2.2.*
 317, line 19, for *de antiq. lib. 3. c. 81. & 83.* read *Doc. antiq. lib. 2. c. 81. & 82.*
 317, line 24, for *aurus* read *aurum*.
 317, line 15*m*, for *prunam* read *primam*.
 319, line 10, for (5) read (6).
 319, line 10*m*, for *probaio* read *probatio*.
 320, line 15, for *Achob* read *Achab*.
 321, line 25, for *amanti* read *amenti*.
 322, line 13, for *in fideles* read *infideles*.
 322, line 18, after *&* insert *Petrus*.
 325, line 4, after *est* insert *etiam*.
 325, line 24, for *sub.* read *sup.* (i. e., *supra*).
 325, line 1*m*, for *Prob.* read *Prop.*
 326, line 25, for *& de* read *& C. de*.
 328, line 2, for *ilio* read *illo*.
 328, line 15, before *hoc* omit *in*.
 328, line 17, for *lare* read *late*.
 328, line 20, for *amantes* read *amentes*.
 328, line 2*m*, for *principans* read *principalis*.
 329, lines 16-17, for *sententia* read *sententiae*.
 329, line 23, for *faretur* read *faietur*.
 331, line 2, for *disputio* read *disputatio*.
 331, line 12, for *movoant* read *moveant*.
 331, line 26, for *methaphorice* read *metaphorice*.
 331, line 3*m*, for *rescellitur* read *refellitur*.
 332, line 1, for (12) read (21).
 332, line 6, before *est* insert *non*.
 332, line 16, before *jus* insert *in*.
 332, line 17, for *& tempora* read *tempora*.
 332, line 24, for *omnius* read *omnium*.
 334, line 5, for *quaerendam* read *quaerendum*.
 335, line 10, for *quo* read *qua*.
 335, line 3*m*, for *pesitū* read *positū*.
 336, line 4, before *dominium* insert *verum*.
 336, line 5, for *civilum* read *civilium*.
 338, line 18, for *rogoti* read *rogati*.
 339, line 24, for *tam* read *iam*.
 339, line 17*m*, for *legimus* read *legitimus*.

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- 341, line 3, for *Antonius* read *Antoninus*.
 341, line 5, for *de quadr.* read *quadri*.
 341, line 25, before *in corpore* insert *ut*.
 342, line 2, for *dominum* read *dominium*.
 342, line 8, for *libri* read *liberi*.
 342, line 16, for *naturali* read *naturali*.
 343, line 1, for *Dani. 9.* read *Dani. 2*.
 343, line 9, for *legam* read *legum*.
 344, line 2, for *varione* read *ratione*.
 344, line 7, for *regne* read *regna*.
 344, line 12, for *mutuo* read *mutuo*.
 344, line 14, for *loth* read *Lot*.
 344, line 15, for *si ad finistram juris, ergo* read *si ad sinistram ieris, ego*.
 344, line 28, for *incoepisse* read *incepisse*.
 346, line 4, for *probilius* read *probabilis*.
 346, line 6, for *modo* read *mundo*.
 346, line 8, for *Christo* read *Christi*.
 347, line 17, after *Orientale* insert *et Occidentale*.
 347, line 22, before *dicit* insert *illic*.
 348, line 25, for *per mutationem* read *permutationem*.
 348, line 4m, for *humono* read *humano*.
 349, line 6, for *dominium* read *dominum*.
 349, line 13, for *praedentitur* read *praetenditur*.
 349, line 26, for *principium* read *principum*.
 349, line 27, before *capit.* insert *in*.
 350, line 18, for *sit* read *est*.
 350, line 26, for *ad Eph. 2* read *ad Philip. 2*.
 350, line 26, for *facta* read *factus*.
 350, lines 28-29, for *reprimendam* read *reprimendum*.
 350, line 29, for *videtur* read *videtur*.
 350, line 29, for *vafere* read *favere*.
 351, line 16, for *sum mus* read *summus*.
 352, line 9, for *viderur* read *videtur*.
 354, line 19, before *administrationem* insert *ad*.
 354, line 26, for *facilitas* read *felicitas*.
 355, line 1, for *solicitas* read *solitae*.
 355, line 24, before *non est* insert *hoc*.
 356, line 1, for *novos* read *novos*.
 356, line 6, before *artic.* insert *6*.
 356, line 27, for *Christus* read *Christi*.
 357, line 24, after *polest* insert *eis*.
 358, line 28, for *aut* read *autem*.
 359, line 29, for *bestia* read *bestiae*.
 359-360, for *fuert* read *fuert*.
 360, line 12, for *litet* read *licet*.
 360, line 22, after *Primo*, insert *quia*.
 360, line 23, for *tenentor* read *tenentur*.
 360, line 29, after *saltem* insert *in*.
 362, line 2, for *aliquid* read *aliquod*.
 364, line 5m, for *5.* read *5*.
 364, line 10, for *invicibilis* read *invincibilis*.
 364, line 13, for *parte 9* read *parte 6*.
 364, line 23, for *difficultas* read *difficultates*.
 365, line 22, for *peccat.* read *peccata*.
 365, line 5m, after *sua* add *ponit*.
 366, line 1, for *at* read *ad*.
 367, line 5, before *contrario* insert *e*.
 368, line 6, for *fideliatis* read *infidelitatis*.
 368, line 9, for *illuminat* read *illuminaret*.

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- 368, line 11, for *mare* read *male*.
 370, line 3, for *non possunt hac ratione* read *non hac ratione possunt*.
 371, line 23, for *tenetur* read *tenentur*.
 373, line 4, before *Probatur* insert *Et*.
 373, line 9, for *cap.* read *can*.
 373, line 10, for *praecipit* read *praecepit*.
 373, line 15, for *recipiendam* read *recipiendam*.
 374, line 8, for *in deles* read *infideles*.
 374, line 11, for *principium* read *principum*.
 374, line 13m, for *Archiepiscopus* read *Archiepiscopici*.
 375, line 2, for *ejus* read *es*.
 375, lines 11-12, for *offendunt* read *offendant*.
 376, lines 9-10, for *quomodo* read *quo modo*.
 376, lines 12-13, for *2. ad Corinth. 2* read *2. ad Corinth. 12*.
 376, line 14, before *bestialis* insert *et*.
 376, line 27, for *sitis qui frater nominatur est fornicator* read *si quis frater nominatur inter vos fornicator*.
 377, line 2, for *polestare* read *polestatem*.
 378, line 3, for *est profecto* read *est. Et profecto*.
 378, line 7, for *Pape* read *Papae*.
 378, line 27, for *offenderat* read *offenderant*.
 379, line 2, for *Christianam*, read *divinam, si enim scirent legem Christianam esse divinam,*
 379, line 8, for *allia* read *alia*.
 379, line 11, for *barbari* read *probari*.
 379, line 22, for *transferi* read *transferri*.
 379, line 4m, for *Septimus* read *Sextus*.
 380, line 3, for *impelli* read *imbelli*.
 380, line 7, for *novos* read *novos*.
 380, line 8, for *Sicut* read *Item*.
 380, line 14, for *occupantas* read *occupandas*.
 381, line 4, before *contra* insert *qui*.
 381, line 18, for *Rho.* read *S. Tho.*
 381, line 25, for *vide* read *vidi*.
 381, line 25, for *scripum* read *scriptum*.
 382, line 2, for *alique* read *aliqua*.
 382, line 6, for *principium* read *principum*.
 382, line 7, for *dedegere* read *detegere*.
 382, line 10, for *protest* read *prodest*.
 382, line 12, for *Mar. 16* read *Matth. 16*.
 383, line 6, for *argendum* read *argentum*.
 384, line 22, for *promulgatione* read *promulgationem*.
 385, line 1, for *terrented* read *terrentes*.
 386, line 15, for *in humanum* read *inhumanum*.
 386, line 27, before *certe* insert *et*.
 386, line 28, for *in humanum* read *inhumanum*.
 387, line 10, for *intercapitales* read *inter capitales*.
 387, line 20, for *barba* read *barbara*.
 387, line 26, for *novo* read *nono*.
 388, line 18, for *in humana* read *inhumana*.
 388, line 21, before *non subditi* insert *sunt*.
 389, line 2, for *hominum* read *hominem*.
 389, line 9, before *exerceant* insert *ne*.
 390, line 4, for *iniquam* read *iniqua*.
 391, line 3, for *gentilium* read *gentium*.
 391, line 11, for *reparari* read *reparati*.
 391, line 20, before *commodis* insert *a*.

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- 391, line 24, for *ff.* read *C.*
 392, line 13, after *Si* insert (6).
 392, line 16, for *debet* read *debeni*.
 392, line 17, for *ostentere* read *ostendere*.
 392–393, for *injuria* read *injuriam*.
 393, line 16, for *commeti* read *commoti*.
 395, line 20, for *divisionibus* read *divisione*.
 395, line 20, for *quia* read *quae*.
 396, line 27, before *essent* insert *illi*.
 396, line 7m, for 4. read 3.
 396, line 8m, for 5. read 4.
 397, line 11, before *sit* insert *hoc*.
 398, line 12, for *peregrinario* read *peregrinatio*.
 398, line 12, before *ipsi* insert *et*.
 398, line 13, for *invenlis* read *inventis*.
 399, line 10, for *bariant* read *bariant*.
 399, line 23, for *postunt* read *possunt*.
 399, lines 26–27, for *procuracionum* read *procurari non*.
 400, line 5, before *licet* insert *non*.
 400, line 6, for *diligendo* read *dirigendo*.
 400, line 13, for *impetietur* read *impediretur*.
 400, line 14, for *quae* read *quaereretur*.
 401, line 3, for [12] read [13].
 401, line 24, for *servantis* read *servandis*.
 402, line 8, for *in fidelibus* read *infidelibus*.
 402, line 20, for *divotiis* read *divortiiis*.
 403, line 17, for *necesses* read *ne cesses*.
 404, line 3, after *filios* insert *suos*.
 404, line 27, for *reliquendo* read *relinquendo*.
 407, line 20, for *fere* read *ferae*.
 407, line 21, for *cico* read *cibo*.
 408, line 10, for *pona* read *bona*.
 409, line 19, for *dimitteret* read *dimittere*.
 411, line 17, for *preditas* read *perditas*.
 411, line 20, for *PELLI* read *belli*.
 411, line 22, for *PELLI* read *belli*.
 414, line 12, for *spaliando* read *spoliando*.
 415, line 18, for *injusto* read *in justo*.
 416, line 12, for *tollator* read *tollatur*.
 416, line 20, for *constitute* read *constituere*.
 417, line 3, for *videtur* read *videntur*.
 417, line 8, for *in justis* read *injustis*.
 418, line 20, for *Turces* read *Turcas*.
 418, line 4m, for *quaestiones* read *quaestionis*.
 420, line 1, for *Psal. 18* read *Psal. 11*.
 420, line 1, for *manu* read *de manu*.
 420, line 10, for *naturali* read *naturae*.
 420, line 18, for *in quam* read *inquam*.
 420, line 29, for *inovatendum* read *inivadendum*.
 421, line 4, for *verbo* read *verbis*.
 421, line 6, for *motu* read *metu*.
 422, line 6, for *indiendi* read *inducendi*.
 422, line 9, for *rebellere* read *repellere*.
 422, line 20, for *titulae* read *tutelae*.
 423, line 17, for *dantius* read *dant ius*.
 424, line 16, before *persequendi* insert *et*.
 424, line 23, after *dictum* insert *est*.
 425, line 2, for *Angust* read *August*.
 425, line 4m, for *hoc* read *hac*.
 426, line 20, for *comes* read *comes*.

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- 427, line 10, for *qui* read *quia*.
 428, line 26, for *cap.* read *can.*
 429, line 13, for *Sho.* read *Tho.*
 429, line 4m, for *quaestio uib.* read *quaestionib.*
 430, line 27, for *illaram* read *illarum*.
 432, lines 5–6, for *omina* read *omnia*.
 431, line 10, for *pellum* read *bellum*.
 431, line 18, for *Quarto* read *Quarta*.
 433, line 14, after *nequam* delete *in*.
 433, line 13m, for *jurae* read *jure*.
 434, lines 3–4, for *profligatis* read *profugatis*.
 436, line 7, for *nulla* read *mala*.
 437, line 7, after *§* insert *sapientum et*.
 439, line 11, for *alium* read *alios*.
 440, line 9, before *audire* insert *et*.
 440, line 23, after *in* insert *re*.
 440, line 28, for *possessione* read *possessioni*.
 442, line 24, before *si* insert *quod*.
 443, line 24, for *dubium* read *debitum*.
 444, line 11, for *in justum* read *injustum*.
 444, line 14, for *paret* read *parte*.
 444, line 16, for *utrumqui* read *utrum qui*.
 445, line 2, for *sequas* read *sequutus*.
 445, line 16, for *recurandam* read *recuperandam*.
 445, line 27, for *in dubitatum* read *indubitatum*.
 446, line 9, for *pellum* read *bellum*.
 446, line 23, for *se per* read *per se*.
 447, line 3, after *ergo* insert *etiam*.
 447, line 12, for *ceberint* read *ceperint*.
 449, line 5, for *expedire* read *expediri*.
 450, line 8, before *actu* insert *in*.
 450, line 6m, for *paul. a* read *paulo*.
 451, line 13, for *in justum* read *injustum*.
 452, line 15m, for *attanē* read *attamē*.
 453, line 16, after *nocentes* insert *sive innocentes*.
 453, line 21, for *ducere* read *ducere*.
 454, line 17, for *juste* read *justo*.
 455, line 13, for *reciperit* read *recepit*.
 455, line 22, for *positi* read *positis*.
 455, line 27, for *autoris* read *autores*.
 456, line 11, for *delectum* read *delictum*.
 456, line 17, for *fines* read *finis*.
 456, line 20, for *injutiiae* read *injuriae*.
 456, line 25, for *propositio* read *proposito*.
 458, line 20, for *transeunde* read *transeunte*.
 460, line 15, for *Archiep.* read *Archid.*
 461, line 12, for *sive* read *sine*.
 462, line 8, for *ab latis* read *ablatis*.
 462, line 10, after *in* insert *rebus*.
 462, line 11, for *imobilib.* read *in immobilib.*
 464, lines 24–25, for *excetere* read *excedere*.
 465, line 1m, for *Notandā* read *Notandū*.
 466, line 2, for *porta* read *parta*.
 466, line 16, for *alii* read *alii*.
 466, line 18, before *communem* insert *unum*.
 466, line 28, for *pellandum* read *bellandum*.
 466, line 29, for *consequentionem* read *consequentionem*.
 467, line 17, for *bone* read *bonae*.
 467, line 18, for *pugnanti* read *pugnanti*.
 467, line 18, for *perniquum* read *periniquum*.

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